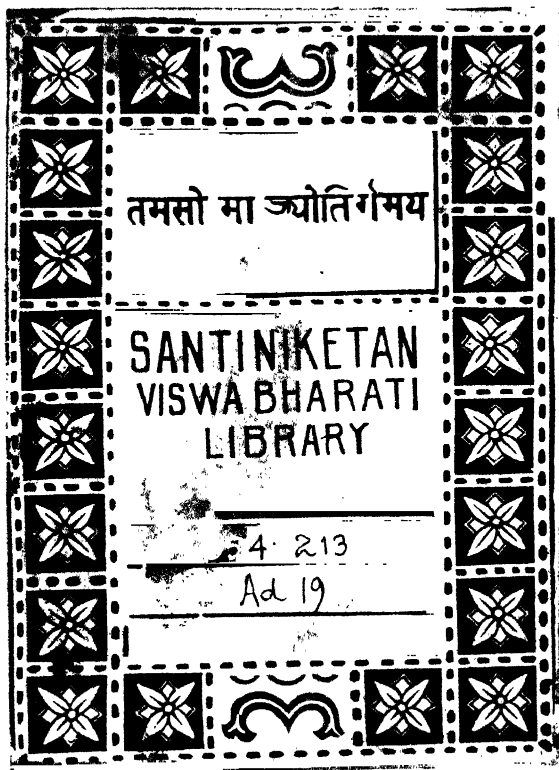


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ELEMENTS

OF

THE INDIAN CONSTITUTION

by

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SWASTIK PUBLISHING HOUSE

6, KELEWADI, BOMBAY, 4

PRICE RUPEE ONE

First Edition, 1938

Printed by R. D. Desai at the New Bharat Printing Press, 6 Kelewadi, Bombay, and Published by G. D. Khanolkar at Swastik Publishing House, 6 Kelewadi, Bombay 4.

PREFACE

This little book is designed mainly for the use of students of High Schools and Intermediate Colleges, who, in some of the Provinces, have to study the Indian Constitution and Administration for their examinations. However, it is also likely to serve as a useful introductory handbook for the purposes of the intelligent layman who may be curious enough to know how under the new Constitution, the country will be governed. With these ends in view, I have mainly selected those topics which are likely to be of importance to students and laymen alike, and have omitted both subtle juridical discussions as well as tiresome details. It is to be hoped that the book will satisfy the need of a handy, introductory text-book on the subject.

It must be remembered that the new Constitution has been introduced, so far only in the Provinces; while the All-India Federation, which will comprise both Provinces as well as the Federated States as the Units of Federation, is yet to come. The opposition of various sections of the public to the Federal part of the Constitution, on the one hand, and the disturbed international situation, on the other, have led to delay in the inauguration of the Federation. The transition from the old to the new Constitution was a fairly easy task in the Provinces; at the Centre, however, the complicated procedure of entry of Indian States into the Federation is bound to cause further delay. He would be a bold prophet indeed, who would predict the exact date of the Federation, but present indications point to 1st April 1940 as a probable date of commencement. In the meantime, the transitional provisions of the Act will continue to apply at the Centre.

I take this opportunity of thanking my friend, Mr. G. D. Khanolkar of the Swastik Publishing House, Bombay, for enabling me to present this brief study of the Indian Constitution in book form.

Allahabad University
26th October 1938.

B. P. ADARKAR

CONTENTS

ELEMENTS

OF

THE INDIAN CONSTITUTION

CHAPTER I

INTRODUCTION

The inauguration of the New Constitution under the Act of 1935 is a very important event in the political history of India. Whatever view we might hold regarding the unsatisfactory and disappointing nature of some of the main features of the Constitution, there is no doubt that, as a whole, it makes a distinct advance upon the older Constitution. In the body of the book, we shall study the main features of the Constitution, but in this place we might conveniently summarise them briefly. In the first place, in the Provinces, the Dyarchy of reserved and transferred departments has been replaced by a more or less complete Autonomy. Secondly a large measure of responsibility is introduced at the Centre in the place of the present autocracy, but this is whittled down by a number of checks and balances and by restrictive reservations of power (such as the safeguards), which, it may be hoped, will become inoperative and unnecessary in the not very distant future. Thirdly, the present Unitary form of Government in India is replaced by the Federal type of organisation, in which not only the Provinces of British India but many of the States will be included, and in which the Autonomy of the Provinces will be joined in a "holy wedlock" (or, perhaps, "holy deadlock"?) with the Autocracy of the Princes. Lastly, as regards the external status of India, we must note that India will continue to be a Dependency of Britain without any sovereign powers in regard to

external affairs, such as those exercised by the Dominions of Canada, Australia, New Zealand and South Africa, i. e., that India still lacks Dominion Status.

It is the duty of every literate and politically-minded Indian to study the Constitution of his country, to know its strength and weakness, and to help, if possible, in the great task of an orderly growth of constitutional government and of laying the foundations of a new Democracy in India. Whatever be the particular form which the Constitution of India will take in the future, there is no doubt that the masses in India need to be trained in the art of democracy, for, as has been well said by Lord Bryce, a great constitutional lawyer, "the true value of a political contrivance resides not in its ingenuity but in its adaptation to the temper and circumstances of the people for whom it is designed." If we wish to reap the advantages of a democratic form of government, we must, first of all, create the democratic temper and foster the sense of civic duties among the citizens of India.

The study of a Constitution broadly falls into three parts: (*a*) the nature of the Government; (*b*) the various parts of the Governmental Organisation; and (*c*) the duties, functions and responsibilities of the various parts and the procedure according to which they are to be discharged. The nature of the government may be determined in various ways: it may be a Monarchy, either Limited, as in Britain, or Absolute, as in ancient India; it may be a constitutional Democracy, as in the United States or France; it may be a Dictatorship, as in present-day Germany, Italy, Russia and Turkey; or it may be some kind of combination of any of these, as in Japan and

China. The main parts of a Government are: the Executive, the Legislature and the Judiciary. All other parts are ancillary to these main parts. Corresponding to the three main parts, there are three main functions of Government: (1) the executive function of enforcing laws, maintaining order and peace, promoting welfare and directing policy; (2) the legislative function of making laws, rules and regulations for the conduct of citizens and for carrying out the administration of the country and (3) the judicial function of interpreting the laws and dealing justice as between disputants in civil or criminal litigation.

In a Federal Constitution, as explained in greater detail in the text, the business of government is divided between two supreme and co-equal authorities, viz., the Federal Government and the Units (whether these are Provinces or States). In order that these two authorities might not transgress their respective spheres, the Constitution is *written* in great detail; if there is any conflict, in spite of the clear-cut division of powers, it is left to be resolved by the Judiciary (*e. g.*, the Federal Court in India). Thus in a Federation, the Constitution is a document of supreme importance.

CHAPTER II

THE HISTORICAL BACKGROUND

The East India Company

The history of British supremacy in India dates from the grant in 1765 of the Dewani of Bengal, Bihar and Orissa to the East India Company, a commercial concern founded in 1600, which not only marked the beginning of the administrative career of the Company but also necessitated parliamentary control and supervision. The Regulating Act of 1773 was the first of a series of measures adopted by the British Parliament with this end in view. This Act centralised control in the hands of the Governor of Bengal who was henceforth also designated the Governor-General. Pitt's Act in 1784 stiffened the control of Parliament by establishing a Board of Control to supervise the affairs of the Company. The next important measure was the Charter Act of 1833, which introduced a radical change in the constitution and functions of the Company. This Act required the Company " to close their commercial business and to wind up their affairs with all convenient speed," and, moreover, vested control and direction of entire Government in a Governor-General aided by Councillors to be jointly called " Governor-General in Council." This Act thus, while converting the East India Company into a purely political body, made the Company trustee for " His Majesty, his heirs and successors, for the service of the Government of India."

The Assumption of Government by the Crown

An important stage in the evolution of British supremacy in India was the Act of 1858 which was the outcome of the Mutiny of 1857. Under this Act, the Crown assumed direct control of the Government of India, and Queen Victoria issued a Proclamation to the Princes and people of India. Among other things, the Proclamation declared that the Crown would respect "all treaties and engagements made with" the Princes, that no further annexation of territory would be made, that "so far as may be, our subjects of whatever race or creed...will be freely and impartially admitted to office in our service." It also announced strict impartiality towards and tolerance of different religious beliefs. In the constitutional sphere, the Act of 1858 provided that the Crown's control should be exercised through a Secretary of State (who replaced both the Court of Directors and the Board of Control), who was to be assisted by a Council of 15 members, called the Council of India. As a sign of the changed constitutional position, the Governor-General was now styled officially, though not by law, Viceroy, i. e., the direct representative of the Crown. Legislative bodies were created both at the Centre and in the Provinces. The members were wholly nominated and had no power other than legislation. The Acts of 1861 and 1892 reconstituted the Central and Provincial Councils and extended their powers to some extent.

The Morley-Minto Reforms, 1909.

Intense agitation led by the Indian National Congress led to the passing of the Act of 1909, which introduced changes in the Executive Governments as well as the Legislatures at the

Centre and in the Provinces. The measure is associated with the names of Lord Morley, the then Secretary of State for India, and Lord Minto, the then Viceroy, both of whom took an active part in its formulation. Prior to 1909, it was a system of complete autocracy, with the strings of power centralised in the hands of the Secretary of State and through him the British Cabinet. The Act of 1909 combined the principles of autocracy and constitutional government. The Legislative Council of the Central Government was to consist of 69 members, including 9 *ex-officio*, 33 nominated (of whom not more than 28 were to be official), and 27 elected members. A comfortable majority thus was secured to the Government's officials and nominees, as against the elected members. The Provincial Legislative Councils were similarly constituted with the aim of securing an official–cum–nominated majority at all times. Other features of the scheme were: (i) indirect election in the case of the Central Legislature, members were to be elected by the Provincial Councils; while in that of Provincial Councils, members were to be elected by the local bodies and other interests; (ii) communal representation, giving special constituencies to Muslims; and (iii) some extension of the powers of the Councils. The functions of the Councils were three-fold: legislative, deliberative and interrogative; but their powers were very much restricted, as they had no control over the budget and their deliberations were purely recommendatory, while the lack of an effective popular majority rendered progressive legislation impossible. As Professor Keith says: "The apparatus of the Councils was not intended to do more than aid the executive in suitable legislation; 'the power of the executive,

even in the Provinces where the Legislatures had non-official majorities, could always in the long run be made effective by the paramount authority of the Central Government, the Legislature of which contained an official majority."

The Montagu-Chelmsford Reforms, 1919

Throughout the war period (1914-18) and after, there was a persistent agitation in India for self-government or home-rule, led by Lokmanya Tilak and Mrs. Annie Besant. Partly to pacify public opinion and partly in recognition of the very valuable services rendered by Indians during the war, the British Government promised to confer a further instalment of reforms upon India. On August 20, 1917, the Secretary of State, Mr. Montagu, made a declaration in the House of Commons that "The policy of his Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire." In pursuance of the above declaration, the Secretary of State, in collaboration with the then Viceroy, Lord Chelmsford undertook a thorough enquiry, the results of which were later published in 1918 in the form of a *Report on the Indian Constitutional Reforms.* The Government of India Act 1919, which came into force in April 1921, was the outcome of the new policy laid down in this *Report.*

The main principles on which the new Constitution was based were described in the Mont-ford *Report* as follows:

(1) that there should be, as far as possible, complete popular control in local bodies and the largest possible independence for those of outside control; (2) secondly, that the Provinces were the place where the earlier steps towards the "progressive realisation of responsible government" should be taken; (3) thirdly, that though steps were to be taken to enlarge the Indian Legislative Council to make it more representative and to increase its opportunities of influencing Government, the Government of India should, for some time at any rate, remain responsible to the British Parliament; and (4) fourthly, that there should be a gradual relaxation of British control over the Government of India and the Provincial Governments.

The essential novelty of the Act of 1919 was the provision of a classification of subjects as Central, (i. e., under the Government of India), and Provincial, and, secondly, of the Provincial subjects into "reserved and transferred," thus introducing a system of a Dyarchy in the Provinces.

Dyarchy means divided rule, or government by two authorities side by side. The Executive of the Provinces was divided into two parts, one consisting of the Executive Councillors with the Governor and the other of the Ministers and the Governor. The former part of the Executive, which was put in charge of the "reserved" departments, remained *responsible* to the Crown only through the Governor, the Viceroy and the Secretary of State, and was thus purely autocratic. The latter half, on the other hand, was made responsible to the elected representatives of the people in the Legislature and was thus democratic or amenable to popular control. However, the "purse" was joint for the Provincial Government as a whole,

i. e., the Governor was required to allocate the revenue between the two parts of his administration after joint discussion with Councillors and Ministers. The "reserved" subjects included land revenue and land laws, police and prisons, administration of justice etc; among the "transferred" subjects were local self-government, education, excise, agricultural and industrial developmnet etc. The Provincial Executives consisted of the Councillors who were either officials or appointed non-officials, on the one hand, and Ministers, who were to be chosen from amongst the elected members of the Legislature, on the other. As regards the Legislatures, the Government of India Act of 1919 provided that at least 70 per cent of the members of Provincial Legislative Councils should be elected and that not more than 20 per cent should be official members, the rest being nominated members.

Under the Act of 1919, extensive powers were vested in the Crown which exercised them through the Secretary of State for India. The Secretary of State was advised by the Council of India as before; but although the composition of the Council was improved to some extent, it never had any power of initiating any action or expenditure and it could only consider proposals and matters placed before it by the Secretary of State, who thus wielded uncontrolled power over the Government of India. Under the Act, a new post was created, that of the High Commissioner for India who was entrusted with certain functions so far performed by the Secretary of State, such as purchase of Government stores in London etc.

The Central Government still continued to be responsible to the Crown through the Secretary of State, and the Executive

under the Act of 1919, consisted wholly of officials and appointed non-officials (from outside the elected section of the Legislature). The function of the Legislature was merely legislative, deliberative, and interrogative; it exercised no effective control over the action of the Executive. That is to say, the Executive was not *responsible* to the Legislature. The Governor-General possessed very wide powers of certification (of bills, if the Legislature refused to pass them) and of veto (*i. e.*, the power to reject a legislative enactment passed by the Legislature), which rendered the Legislature ineffective and impotent. The Government of India could legislate and administer the Central subjects, such as defence, foreign affairs, relations with Indian States, communications, posts and telegraphs, currency and coinage, public debt, commerce, customs and income tax, salt and opium, criminal and civil law etc. Besides this, the Government of India exercised powers of superintendence over the Provincial Governments.

The Central Legislature consisted of two Chambers, *viz.*, the Council of State and the Legislative Assembly. The Council of State consisted of not more than 60 members, of whom 33 were elected from very restricted electorates (of about 20 thousand electors only for the whole of India) and the rest were nominated. The Legislative Assembly consisted of 146 members, of whom 105 were elected, while 26 were official members and 15 nominated non-officials. Although the franchise was considerably enlarged, the elected members of the Assembly were returned by an electorate consisting of 1½ million voters only. A retrograde feature of the Act was the continuance of communal electorates, especially for Muslims,

Europeans and Sikhs and the reservation of seats for non-Brahmins of Madras and Bombay, although it was admitted that communal representation was " a very serious hindrance to the development of the self-governing principle. "

The presence of the Council of State (an undemocratic body of " elders " representing the "vested interests" in India) acted as an effective check upon progressive legislation of a popular type; the powers of certification and veto possessed by the Governor-General rendered the Legislature impotent in giving effect to the public will and opinion in important matters; a wholly irresponsible Executive, unamenable to popular control, meant that autocracy rather than democracy was the main guiding principle at the Centre. In other words, at the Centre, the Act of 1919 gave not " responsible " but merely " representative " government. Only in the Provinces, did it introduce an element of partial responsibility in the shape of Dyarchy; while in local bodies, complete autonomy was now the rule.

Later Developments

In the preamble (preface) to the Act of 1919, the British Parliament reserved to itself the right of determining the time and manner of India's future advance towards the goal of responsible government. The Act also provided for an Enquiry into the working of the Constitution after ten years and for proposals for further advance. However, ever since the grant of the Reforms of 1919, public opinion had been largely hostile to the scheme as being halting and limited in scope. Apart from the unsatisfactory nature of the Scheme, certain events

after its adoption (such as the Rowlatt Acts, designed to suppress political agitation and to control the Press, the Amritsar Massacre of April 1919, the Khilafat movement etc.,) created a sense of resentment among the people. The Indian National Congress under the leadership of Mahatma Gandhi launched the first non-co-operation movement and the Indian Legislative Assembly renewed the demand for a revision of the Constitution with a view to the grant of Dominion Status. In 1927, therefore, a Commission was appointed under the chairmanship of Sir John Simon to "inquire into the working of the system of government, the growth of education, and the development of representative institutions, in British India and matters connected therewith." The Commission began its work under unfavorable circumstances, for there was a strong opposition to the composition of the Commission, in legislatures and outside. The Commission made several important recommendations, which, however, were to be soon rendered out-of-date by the progress of events.

Lord Irwin announced in October 1929 that he had been authorised by the Home Government to declare that the natural goal of India's advance was Dominion Status (i. e., the political position, power and sovereignty which were commonly enjoyed by the Dominions in the British Empire, such as Canada, South Africa, Australia and New Zealand, and which were both the result of constitutional enactments as well as parliamentary usage and custom) and that after publication of the Simon Commission's Report, a Round Table Conference would be convened to seek a common basis for the formulation of proposals for Parliament's consideration. There were altogether three

sessions of the Round Table Conference. The most interesting development in these sessions was the emergence of the federal idea and the unanimous acceptance of an All India Federation by the Indian Princes as well as by the representatives of British India. The Federation, it was said, "would establish a federal government and a federal executive, embracing both the British Indian Provinces and the Indian States in one whole, associated for common purposes, but each securing control of their own affairs: the Provinces autonomous and the States sovereign and autonomous." After the Third Round Table Conference, the British Government issued the document, known as the White Paper, in March 1933, containing proposals for discussion by the Joint Committee of Parliament. After further emendations in the Committee, the Government of India Bill came into Parliament, and after minor alterations, passed into Act. The Act received the Royal Assent on August 2, 1935.

CHAPTER III

THE ALL-INDIA FEDERATION AND ITS MAIN FEATURES

Before describing the essential characteristics of the Indian Federation, it is necessary to discuss the nature of the federal system of government. It has been agreed on all hands that the federal system is best suited to the conditions in India, with her Provinces and States and even the opponents of the Constitution of 1935 do not object to the Federation as such but only to the composition of the system, to the limitations introduced in the Act upon the power of the national Government as a whole and upon those of Provincial authorities, and lastly to the inherent impediments in the Act to the future growth of the Constitution towards Dominion Status or the " Substance of independence. " There is no doubt that the Constitution of 1935 is a *compromise* constitution designed (1) to grant a substantial measure of political power to the Indian people, (2) to safeguard the special interests of Britain, especially in a period of transition towards full responsible government, and (3) to provide an adequate balance of power at the Centre so as to help British control and so as to protect the interests of the Princes and to maintain their treaty rights. It is the peculiar nature of the Indian political situation which has necessitated the various departures made from the other Federal models.

Unitary and Federal constitutions

The Indian Constitution, prior to 1935, was of the *unitary* type. In such a constitution, the central authority is supreme in all matters, whether of central or provincial interest and can control practically the whole machine of administration. Such is the system prevalent in England, France, Japan, Sweden, Norway etc. As the Joint Committee state : " Notwithstanding the measure of devolution in the Provincial authorities, which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralised Government. "

A Federation requires two principal conditions to be fulfilled. Firstly, there must exist a number of states, provinces or cantons, closely connected by geographical situation, history or race. *i. e.*, there must be the idea of a common nationality, Secondly, there must exist just the required balance between the centrifugal (separative) and centripetal (unifying) forces of sentiment among the people, who must, thus, desire *union* but must not desire *unity*. Among the federations of the world there are two main types : (1) In the first type, federation was the result of a spontaneous desire on the part of autonomous, sovereign states to join together for certain common purposes and establish a common central government for that purpose. This implied a *compact* or a treaty of indissoluble union between the contracting states. Examples of this type are Germany, Switzerland and the United States. The second type of federation is peculiar to the genius of the British nations. Here it was not so much an evolution into federation or a compact, but a *devolution of power* from the Imperial Government and the establishment of the federal constitution at the instance of

Parliament. Canada (in which more power is reserved for the Centre than for the Provinces), Australia (where States are co-equally supreme with the Commonwealth Government) and South Africa (which is somewhat of a cross between a unitary and a federal system) are instances of this second type. Naturally, owing to the existence of an external party, *viz.*, the British Government, as the arbiter of India's constitutional destinies, the models followed in our Constitution have been mainly Canada and Australia. The Indian Federation however, exhibits all the normal characteristics of federal government. As Keith remarks : " There is a rigid constitution, with a very elaborate distinction of federal and local powers, and a federal court whose duty it is to secure the due observance of the limits placed on the centre and the local governments and legislatures. The constitution is written, and amendment is definitely and narrowly restricted. But the special circumstances of India result in many variations between the Indian constitution and those of Canada and Australia. "

The Unique Nature of Indian Federation

The proposed Indian Federation will be unique in many ways. In the first place, British India has had a unitary government and the Provinces have no sovereignty to surrender to any federal government ; the Indian States, on the other hand, though they are under the suzerainty of the Paramount Power (*i. e.*, the British Crown) form no part of His Majesty's dominions. Secondly, the Rulers of the States are not prepared to surrender the same range of authority to the Centre as the Centre will exercise in relation to the Provinces. The Joint Committee

admitted that a Federation, " composed of disparate constituent Units in which the powers and authority of the Federal Government will differ as between one constituent Unit and another, " was an anomaly. Thirdly, while the representatives of the Provinces in Federal Legislature will be *elected*, those of the States will be *nominated* by the Princes. Thus there is lack of uniformity both as regards the composition as well as the powers of the Federal Government in relation to the Units, viz., the Provinces and the States.

The Nature and Scope of Central Responsibility

The Princes accepted the idea of an all-India Federation with the shrewd foresight that they could now have a hand in the determination of policy at the Centre and thus stem the tide of oncoming democracy which was likely to affect their sovereign position. On the other hand, the British element at the R.T.C. was anxious to provide some ballast to the Central Government to counterbalance the influence of the people's representatives. Thus both the Princes and the British delegates to the R.T.C. agreed that responsibility at the Centre was feasible if the Princes' nominees were given sufficient strength in the Federal Legislature. Thus, now although the native States account for only 23 per cent of the population of India, they will have 33 per cent of the voting power in the Assembly and 40 per cent in the Council of State. The presence of the Princes' nominees, who can be influenced by the Paramount Power through its direct relationships with States, is an effective safeguard and a brake upon any anti-British use of Central responsibility.

Apart from this implicit safeguard, however, there have

been imposed numerous other restrictions and "safeguards" in a more explicit manner that militate against the basic principles of any recognised system of popular government. The special powers and "responsibilities" of the Governor-General, in connection with these safeguards are so far-reaching and wide, that Central responsibility of the Federal Executive to the Federal Legislature is considerably whittled down. In the first place, the principle of Dyarchy which was rejected by the Simon Commission, has been deliberately introduced at the Centre. The Governor-General is granted the executive power of the King. That power extends to all matters in respect of which the Federal Legislature can make laws, to the raising of defence forces for the Crown in India, and, in the case of States, only to matters over which the Federation has legislative power. The Federal Council of Ministers chosen by the Governor-General from amongst the members of the Legislature will aid and advise him only in regard to the "transferred" subjects. The "reserved" subjects, which are a deduction from Central responsibility, are (i) defence, external affairs and ecclesiastical affairs (ii) the administration of British Baluchistan, and (iii) matters left by the Act to the Governor-General's discretion. Detailed discussion of the special powers, responsibilities and discretionary powers is given elsewhere (Chapters 5 and 6). Secondly, the Central responsibility of the Council of Ministers is further reduced in the case of the States by limiting it only to those subjects which the States have agreed to pass under the control of the Federation. Thirdly, the relations of the Paramount Power with the States will not be controlled by the Governor-General in Council, as heretofore, but by His Majesty's

Representative; *i. e.*, they will lie outside the scope of the Federal Ministry. Not only this, but even within the sphere of subjects assigned by States to Federation, the Federal legislation is to be enforced through His Majesty's Representative and not directly by the Federal Executive. Lastly, important national concerns such as the Reserve Bank of India and the Federal Railway Authority are practically kept outside the sphere of Federal Ministry's control, and have been made almost autonomous.

Provincial Autonomy

An important feature of the new Constitution is the principle of autonomy (self-government) adopted in the Provinces. The Morley–Minto reforms granted only *representative government*, without an effective voice in affairs to the Provincial legislatures; the Montagu-Chelmsford reforms granted *Dyarchy*; the new Constitution has now granted *Provincial Autonomy*. The definition of Provincial Autonomy is two-fold; (i) in the first place, Provincial Autonomy means that the Provincial Executive is to be wholly *responsible* to the Provincial Legislature with regard to the matters falling within its purview; (ii) secondly, as the Joint Committee state, Provincial Autonomy is a scheme " whereby each of the Governors' Provinces will possess an Executive and a Legislature having precisely defined spheres and, in that exclusively provincial sphere, broadly free from control by the Central Government, *i. e.*, in this sense, it means freedom from control from above. Interpreted in either sense, however, it no doubt implies a devolution or transfer of power from the Crown and its agents in India to the representatives of the people in the Provinces.

Provincial Autonomy, however, is not a cent per cent autonomy. It is whittled down by the theory of Executive Independence and Central Control. As Lord Zetland, the Secretary of State, said, "The Bill does not, of course, complete that process (of devolution of power), because in certain spheres defined in the Bill itself the Governors of the Provinces who will continue to be responsible to Parliament here, will be entitled to act in any way that they think right, even if in so doing they are acting contrary to the advice tendered by their Ministers." The Governors, who are representatives of the Crown in the Provinces, possess under the Act certain reserve powers of supervision and control over the Ministers as also of legislation and government by ordinances under certain emergencies. Lord Zetland claimed that these reserve powers were necessary as much "in the interests of the peoples of India as in the interests of Britain." The only redeeming feature of the powers, however, is that the reserve powers will be generally latent and will come into operation only under certain specified circumstances. As regards Central Control, the Joint Committee state that "the Central Government and Legislature would, generally speaking, cease to possess in the Governors' Provinces any legal power or authority with respect to any matter falling within the exclusive Provincial sphere, though the Governor-General will have authority to secure compliance in certain matters with directions which he may find it necessary to give." Both the Governor-General (acting in his own discretion) and Parliament have the power of interference in several matters of detail, especially for

the purpose of preventing any grave menace to the peace and tranquillity of India or any part thereof.

From the actual working of Provincial Autonomy during the past year or so, however, it does not appear that these external interferences with ministerial action are likely to be so important. Prior to acceptance of office, the Congress Governments in the Provinces demanded "assurances" that there would be no interference by the use of special powers; although the assurances were not given in the form desired, actually, since the inauguration of Provincial Autonomy in April 1937, there has been practically no interference.

The Constitutional Status of the Indian Federation

The Act of 1935 has no preamble of its own, but it continues the preamble of the Act of 1919, which made a declaration regarding the future political status of India. That preamble runs thus:

> "Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual developments of self-governing institutions, with a view to the progressive realisation of *responsible government* in British India as an intergal part of the British Empire" etc.

It has been already noted in Chapter II that Lord Irwin, the then Viceroy, announced in 1929 that he had been authorised by the British Government to say that the "natural goal of India's advance was *Dominion Status*." Similarly, Mr. Ramsay Macdonald, the Prime Minister, in his concluding speech at the First Round Table Conference, hoped that as a result of the labours of that Conference, India would come to possess "the

only thing which she now lacks to give her the status of a Dominion," viz., "the pride and the honour of responsible government." However, these and similar earlier pledges were ignored and the framers of the Act of 1935 stuck to "responsible government." As Sir Tej Bahadur Sapru put it, "To argue at this distance of time that Parliament is bound by the preamble of the Government of India Act 1919 only, and that it makes no reference to Dominion Status, that the declarations made by Viceroys and Prime Ministers of His Majesty's Government are not binding......will be to give a rude shock to the faith of those Indians who have honestly believed in the realisation of India's destiny as a self-governing dominion......" The *Statute of Westminister*, which was enacted by Parliament in 1931, gave a precise and legal meaning to the phrase, "Dominion Status," and thus raised it from its place in vague common parlance to legal recognition. It would have been quite feasible to include a reference to Dominion Status as the ultimate (but not too distant) goal of India's political evolution. However, there was a strong opposition to this amongst Conservative circles at the time.

Control of the British Parliament

The supremacy of Parliament over British India and its power to legislate therefor or any part thereof are reasserted in the Act and it is expressly provided that no legislature, Federal or Provincial, may make any law affecting the sovereignty of the Crown or Parliament. Moreover, where responsibility does not rest with the Indian legislatures, Federal or Provincial, it must rest with the British Parliament acting through the

Secretary of State. That is to say, the reserve powers of the Governor-General and the Governors are ultimately subject to the control of Parliament. Thus, in the case of Provinces, when the Governor exercises his legislative function (*See* Chapter VII) and promulgates what is called a Governor's Act, such an Act must afterwards be laid before Parliament, and also the concurrence of the Governor-General obtained for it prior to its enactment. Similarly, when the Governor promulgates an Ordinance, acting "in his own discretion" or "in his individual judgment" (*Cf.* Chapter VII), the Ordinance must be communicated forthwith through the Governor-General to the Secretary of State and laid by the latter before each House of Parliament. Similarly, any Ordinance promulgated by the Governor-General in his discretion or individual judgment, which extends the usual period of six months, as also any permanent Act enacted by him under his power of legislation, must be laid before both Houses of Parliament. Further, in the event of failure of the Constitution, the Governor-General is authorised to make a proclamation assuming certain powers as at his discretion, but such a proclamation must be laid before both Houses of Parliament.

Apart from this supervisory power, the British Parliament's final responsibility and sovereignty are formally expressed in the provisions of the Act of 1935, which lay down that the original Instruments of Instructions issued to the Governor-General and the Governors, (*Cf.* Chapters V, VI and VII) and any later amendments or revocations shall be laid before Parliament and that to have effect they must receive the approval of both the Houses. Sir Samuel Hoare, in course of the debates,

explained : "We are proposing to adopt the procedure recommended by the Committee that, for the first time in our history, the Draft Instructions should receive the Parliamentary sanction of both Houses," adding that the Instructions would not be inserted in a Schedule to the Bill, "for the obvious reason, that if they were they would be interpretable by the Federal Court." Under another section of the Act, Orders in Council, issued by the Crown, also generally require the prior approval (with or without amendment) of both Houses of Parliament. The main result of both these provisions is that the Prerogative (i. e., right) of the Crown to issue Instruments of Instructions or Orders-in-Council is severely delimited by Parliament's encroachment upon it. Whether or not this encroachment is judicially challengeable or liable to be declared invalid by British Courts, this much is certain that its effect, so far as India is concerned, is bound to be retrograde. This is so, because if there is any chance of a sympathetic Government in power in Britain (like the Labour Government) extending the scope of the Constitution by the two processes of Instruments of Instructions or Orders in Council, such a chance will be nullified by the presence of an unrepresentative and unprogressive House of Lords (where Labour can never get a majority)

Constituent Powers and Amendment of the Constitution

The powers which a constitution provides for amending its provisions are called "Constituent Powers." The Act confers on the Federation no general constituent power; nor does it confer any such authority on the Provinces. The Constitutions of Canada and Australia can be amended by the British Parliament only at the will of their Governments and Parliaments

with in the case of Australia a popular referendum. In the case of India, the power to alter the Constitution is entirely vested in the Crown and Parliament. The constituent power of the Crown is by means of Orders-in-Council and can be exercised only in certain matters, either on recommendation by the Indian Legislatures with an address duly presented or without such recommendation. In either case, the Order-in-Council must be placed before both Houses of Parliament for approval, as in other cases. This constituent power, however, is restricted to certain specified matters, such as the size or composition of the Federal or Provincial Legislatures, the number of chambers of Legislatures, the methods of election or qualifications of members, women's franchise, and general franchise. Parliament's constituent power, on the other hand, is more comprehensive and fundamental and extends to the whole Act.

CHAPTER IV

THE SECRETARY OF STATE AND HIS ADVISERS

The Position of the Crown

The Constitution of 1935 effects some significant changes in the respective positions of the Crown, the Secretary of State the Governor-General and Governors, and the Rulers of States. Owing to the federal nature of the Constitution, the Centre has no longer the same supremacy over the Provinces as under the Act of 1919 or earlier Acts; now in their respective spheres, the Centre and the Provinces are co-supreme, except in regard to the special powers enjoyed by the Governor-General and Governors. Secondly, owing to the entrance of the States into Federation, certain powers regarding relations between States and Paramount Power hitherto exercised by the Governor-General, as head of the Central Government, have to be taken out of his hands now as the head of a Federal Government, which will be dominated by representatives of British India. For these two main reasons, the executive authority vested by the Government of India Act of 1858 and subsequent Acts in the Secretary of States and the Governor-General has been *resumed by the Crown*, to be redistributed in such manner as the Act of 1935 provides. This authority is a far-reaching authority, even more ample than the authority of the Crown in Britain, and is limited only to the extent that it is circumscribed by the Act of 1935.

The *powers of the Crown in relation to States* and their accession to Federation will be discussed later (Chapter X); *its powers exercisable through the Governor-General*, as its Representative, will be studied in the appropriate place (Chapter V). The reader is, therefore, referred to later pages in these connections. Reference may also be made to *the constituent powers of the Crown* already discussed in the last Chapter.

The rights of the Crown are of two kinds: (1) prerogative and (2) statutory. The prerogative of mercy and the exemption from civil or criminal liability are instances of the former kind of rights. Statutory rights include matters such as Accession of the Indian States to the Federation, the Instruments of Instructions to the Governor-General and Governors, disallowing of and assenting to Bills and Acts "reserved" for the Crown's consideration, the establishment and constitution of the Federal Court etc. It must be pointed out here that the Crown's powers whether prerogative or statutory, are exercised through the Secretary of State, who acts as the Crown's responsible agent in regard to Indian affairs.

The Secretary of State and His Advisers

The authority vested by the Act in the Crown is exercised by the Crown on the advice of and through the Secretary of State. The Secretary of State is a Member of the Cabinet and thus jointly responsible to Parliament with other Ministers and is, therefore, amenable to control of the Cabinet by means of constitutional convention. The old India Council, which, along with the Secretary of State, exercised a close control over

Indian affairs, has been abolished by the Act of 1935, as being "manifestly incompatible alike with Provincial Self-Government and with a responsible Federal Government." As it was still desirable, however, that the Secretary of State should have a small body of Advisers to whom he might turn for advice on financial and technical matters concerning India, an advisory body is appointed. The Joint Committee stated:

"We concur, therefore, in the proposal in the White Paper that the Secretary of State should be empowered to appoint not less than three nor more than six persons for the purpose of advising him, of whom two at least must have held office for at least ten years under the Crown in India. The Secretary of State will be free to seek their advice, either individually or collectively, on any matter as he may think fit, but will not be bound to do so save in one respect only. It is proposed that, so long as he remains the authority charged with the control of any members of the Public Services in Inda, he must lay before his Advisers and obtain the concurrence of a majority of them to, the draft of any rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service, and any order which he proposes to make upon an appeal to him from any member of the service which he controls. These proposals, in effect, preserve to the Services the safeguards which they at present enjoy through the Council of India, and we have only three suggestions to make with regard to them,

"We think, in the first place, that the service of the Advisers, who are required to have held office for at least ten years under the Crown in India, should not have terminated more than two years before their appointment; secondly, it seems to us reasonable in the circumstances

that at least half of the Advisers should have the Service qualification; and, thirdly, in order to secure that, in matters where the concurrence of the majority of his Advisers will be required, the Secretary of State shall be an effective participant in their deliberations, it seems desirable to us that the Secretary of State shall, in case of equality of votes, have a second or casting vote."

The Act gives effect to these proposals. It provides that an Adviser shall hold office for five years and shall not be eligible for reappointment and shall not be a member of Parliament. The salary of each Adviser shall be £1350 per annum, with extra allowance of £600 per annum for an Adviser who was domiciled in India prior to his appointment. From the date of Provincial Autonomy, *i. e.*, April 1, 1937, the salary of the Secretary of State and the expenses of his Department will now be chargeable to the British Exchequer instead of to the Government of India. However, for executing certain functions of an agency character on their behalf the Federal and Provincial Governments are required to bear an agreed proportion of the total expenses. The change, thus, is not very important to India from the financial viewpoint.

The Powers and Functions of the Secretary of State

The Secretary of State still continues to be the real executive head in regard to all matters of Indian administration and finance. The executive authority vested in the Crown, whether by prerogative or by statute, as well as the executive authority vested in the Cabinet as responsible to Parliament are both concentrated in him. Both the Instruments of Instructions as well as the Orders-in-Council, to which reference has already been

made in the last Chapter, must be drafted by him and laid before Parliament. He has also the general power of superintendence and control over the Governor–General and Provincial Governors, especially in regard to their "special responsibilities" and discretionary powers, as also in regard to the reserved subjects administered by the Governor–General. He has also the power to regulate the conditions of military service and considerable control over the public services.

The High Commissioner for India

The Act lays down that "there shall be a High Commissioner for India in the United Kingdom, who shall be appointed and whose salary and conditions of service shall be prescribed by the Governor-General, exercising his individual judgment," and further that "the High Commissioner shall perform on behalf of the Federation such functions in connection with the business of the Federation, and in particular in relation to the making of contracts as the Governor-General may direct." He is also authorised to undertake to perform, with the Governor-General's approval, and on such terms as may be agreed, agency functions on behalf of a Province or a Federated State or of Burma. His main duties, however, are in connection with purchase of stores for the Railways and the Army, educational advice to Indian students studying in the United Kingdom and protection of India's commercial interests in the United Kingdom. His salary is paid from the Indian revenues and he is responsible to the Government of India. His office in London is located at the India House.

CHAPTER V

THE GOVERNOR-GENERAL AND HIS MAJESTY'S REPRESENTATIVE

There are two main groups of functions which will have to be performed on behalf of the Crown: (1) firstly, the functions relating to the Federation, including functions relating to the transferred subjects under the control of the Federal Executive (appropriately pertaining to Provinces and States) and those relating to the reserved subjects; and (2) secondly, the functions concerning the relationships of the States with the Paramount Power, which lie outside the federal sphere. The functions in the former group are to be performed by the Governor-General while those in the latter group are to be performed by the Crown's Representative (at present called *His* Majesty's Representative). It is lawful for the Crown to appoint one and the same person to fill both the offices. The Joint Committee recommended that the title "Viceroy" should signify the double capacity; accordingly, the Commission appointing Lord Linlithgow as the Governor-General of India and the Crown's Representative also authorises him in addition to bear the title of "Viceroy." The Joint Committee agreed that there should be legal distinction of functions of the two offices, and observed that it might well be that His Majesty would be pleased to constitute two separate offices for that purpose in the future. According to Mr. Morgan, who was counsel to the Princes,

"the dualism of the office of the Governor-General contemplated by the Act seems to be an artificial one and must result either in the Viceroy being completely absorbed in the Governor-General or in separation of the two offices. This separation is bound to come if and when Dominion Status is granted to India."

The Instrument of Instructions

The Governor-General is required to exercise his functions under the Act according to directions contained in his "Instrument of Instructions". This is a document drafted by the Crown, placed by the Secretary of State before both Houses of Parliament for approval and then communicated, with or without amendment, to the Governor-General. It contains detailed instructions regarding the exercise of his functions and so long as he acts within those instructions his action cannot be interfered with by anyone. However, the legal validity of any of his acts cannot be questioned in a Court of Law on the ground that it was contrary to the Instrument of Instructions. The Crown may revoke the Instrument or issue a new one; and by means of the Instrument, again, it can, as pointed out in Chapter III, effect some minor amendments in the Constitution.

The Governor-General

The executive authority of the Federation is vested in the Governor–General. He is the head of the Federal Executive. He exercises the federal authority in regard to two main categories of subjects: *(a)* reserved and *(b)* transferred. Reserved

subjects include Defence, External Affairs, Ecclesiastical Affairs and Administration of the Tribal Areas. In regard to these subjects, the Governor-General is required to act *according to his discretion* after consulting, if he thinks it fit, his Counsellors (see next Chapter.) In these matters, that is to say, he need not consult the Federal Ministers who are responsible to the legislature, but only, if necessary, his own Counsellors who are responsible only to himself.

Special Responsibilities

The Governor-General is required to use *his individual judgment* in relation to the following matters, which are his " special responsibilities " :—

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(*b*) the safeguarding of the financial stability and credit of the Federal Government;

(*c*) the safeguarding of the legitimate interests of minorities;

(*d*) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved by or under the Act and the safeguarding of their legitimate interests;

(*e*) the securing in the sphere of executive action of the purposes which the provisions with respect to discrimination, are designed to secure in relation to legislation;

(*f*) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(*g*) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof;

(*h*) the securing that the discharge of his functions with respect to which he is by or under the Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

These "special responsibilities" are partly designed to safeguard the interests of Britain, politically and economically, partly for the maintenance of order and peace, and partly for the protection of sectional interests, minorities and the Princely Order, and are commonly known as "safeguards." From the British standpoint, there is no doubt that these safeguards are regarded as a necessary transitional measure, as (in the words of Lord Lothian) "the curbstones and fences which prevent the coach of parliamentary government from tumbling into the ditch in its early years." It is hoped that in course of time, by usage and custom, they will fall into disuse or at least that their edge will wear off.

Ordinances, Governor-General's Acts etc.

The Governor-General has also certain special legislative and administrative powers exercisable under certain circumstances.

(1) When the Legislature is not in session, if an emergency arises, the Governor-General may, with the consent of the Ministers, promulgate an Ordinance to meet that emergency; but the Ordinance will cease to operate after six weeks from the re-assembling of the Legislature, unless a resolution disapproving it is passed by both Chambers before its expiry.

(2) He can also enact a " Governor-General's Act " in his discretion, *i. e.*, without consulting his Ministers, on a permanent basis; but prior notice of his intention to enact such an Act must be given to the Legislature. It must also be laid afterwards before Parliament for approval.

(3) In the event of failure of constitutional machinery, the Governor-General has the power to carry on the administration by Proclamation issued by him in his discretion. Such a Proclamation, unless terminated earlier by the Governor-General himself, will cease to have effect after a continuous period of three years, when the Act of 1935 will again begin to operate, subject, of course, to any subsequent amendment by the British Parliament.

His Majesty's Representative

The Viceroy, in his capacity as His Majesty's Representative, will exercise the functions of the Crown (Paramount Power) in its relations with Indian States. Before April 1, 1937 these functions were exercised by the Governor-General In Council; but the Council was not responsible to the Legislature and hence the relations of the States with the Crown were not subject to control by representatives of British India. Under the new Act, when Federation comes into being the questions relating to Paramountcy (i. e., the relationship between the Crown and the States) will be kept outside the purview of Federation's powers. Thus, " Paramountcy is outside the Federal Constitution." The Crown's Representative is appointed by the Crown itself acting on the advice of the Secretary

of State and the Prime Minister. Legally he is separate from the Governor-General; but in practice the same person might hold the two offices which signify respectively the Crown's functions in relation to the Federation (Governor–General), and its functions in relation to Paramountcy (His Majesty's Representative).

CHAPTER VI

THE FEDERAL EXECUTIVE AND THE FEDERAL LEGISLATURE

I

The executive authority of the Federation, which is to be exercised by the Governor-General, acting on behalf of the Crown, extends :—

(*a*) to all matters with respect to which the Federal Legislature has the power to make laws (*See* Appendix A);

(*b*) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment;

(*c*) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to *tribal areas.*

This authority is limited by the legislative powers independently conferred upon the Provinces and, in the case of States, is exercisable only in respect of such subjects as the Ruler has agreed to hand over to the Federation's control.

We have already discussed the part played by the Governor-General, as a component part of the Federal Executive, in the last Chapter. The Dyarchy in the Federal

Government necessitates that the Governor-General should be advised by two groups of advisers. In regard to the *reserved* subjects, *e. g.* defence, external affairs etc., he will be advised by his *Counsellors*, who must not exceed three in number and whose salaries and conditions of service will be prescribed by the Crown. These Counsellors will be responsible to the Governor–General alone, i. e., they will not be amenable to control by the Federal Legislature. But as it is necessary that the Governor–General should have a spokesman in the Legislature (as at present) for each of the portfolio, the Counsellors can sit as members of both Chambers of the Federal Legislature, but they have no right to vote.

In regard to the *transferred* subjects, the Governor-General will be assisted and advised by a Council of *Ministers*, not exceeding ten in number. This does not detract from the Governor–General's power to act in his own direction (*e. g.* in regard to defence, ecclesiastical affairs, external affairs and tribal areas) or in his individual judgment (*e. g.*, under his various "special responsibilities" discussed in the last Chapter), where he is required to do so under the Act. If any question arises as to whether a matter belongs to the sphere of his discretion* or individual judgment, the decision of the Governor–General in his own discretion is final. The Ministers are appointed by the Governor–General from amongst the members of the Federal Legislature and must command the confidence of the

The distinction is as follows : The matters in which the Governor–General acts in his discretion are reserved subjects and, therefore, he does not consult the Ministers about them : in matters in which he acts in his individual judgment, he must consult his Ministers, but he may not act on their advice, although these matters (special responsibilities) fall within the ministerial field.

Legislature. They hold office during the pleasure of the Governor-General. The Governor-General is charged with the duty, by his Instrument of Instructions, to "use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including, so far as practicable, representatives of the Federated States and members of important minority communities) who will be in a position to command the confidence of the Legislature. But in so acting, he shall constantly bear in mind the need for fostering a sense of joint responsibility among his Ministers." The Instrument of Instructions further requires the Governor-General to inculcate a sense of joint responsibility among the Counsellors and the Ministers, by encouraging the practice of joint consultation with them all, especially in regard to matters of Defence and Finance.

Financial Adviser

In order to assist the Governor-General in the discharge of his special responsibility of safeguarding the financial stability and credit of the Federal Government, the Governor-General will appoint a Financial Adviser; but except in the case of the first appointment, the Ministers shall be consulted as to the person to be chosen. His staff and salary will be determined by the Governor-General in his discretion and he will hold office during the latter's pleasure. The a[illegible] of the Adviser will also be available to the Federal Government in any matter relating to finance if necessary. The Financial Adviser must be distinguished from the Economic Adviser recently appointed

in the Government of India's Commerce Department.

Advocate-General

The Governor-General shall also appoint an Advocate-General for the Federation to advise the Federal Government on such legal matters and to perform such other duties of a legal character (e. g., to represent the Federal Government in the Federal Court) as may be assigned to him by the Governor-General. In the performance of his duties, he will have the right of audience in all courts in British India and, in a case in which Federal interests are involved, in any court in a Federated State. He holds his office during the pleasure of, and his salary (which is non-votable) shall be determined by the Governor-General. He shall have the right to speak in either Chamber or in any committee of the Legislature of which he may be named a member, but he shall not be entitled to vote.

II

The Federal Legislature consists of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State (Upper Chamber) and the House of Assembly (Lower Chamber).

The Council of State

The Council of State consists of 156 representatives of British India and not more than 104 representatives of the Indian States. It is a permanent body not subject to dissolution (as the Assembly is), but about one-third of its members will retire

every third year. The representatives of British India are to be elected *directly*, while those of the States are to be nominated by the Rulers. The distribution of seats among the Provinces is shown in Appendix B. It must be noted that the election is direct and on a communal basis. Thus, for the election of Sikh and Muslim representatives, the Provinces are divided into territorial constituencies and the voter on the electoral roll of a territorial constituency can only vote for a representative of his own community. Accordingly, 6 seats have been allotted to the Scheduled Castes (depressed castes), 4 to the Sikhs, 49 to the Muslims, 1 to Anglo-Indians, 7 to Europeans and 2 to Indian Christians, while 6 seats are reserved for women. In regard to allocation of seats among the (nearly) six-hundred States, *Jagirs* and *Sanads*, a complex problem was solved by taking into consideration the relative rank and importance of each State etc, as indicated by salute guns and other factors. It should be noted that although the States account for only 23 per cent of the total population of India, they will have as much as 40 per cent of the voting power in the Council of State. As Keith remarks the result of the composition of the Council of State is "that the members of the Council are essentially of two kinds--members who speak for a limited electorate (British Indian), and members for expressing the views of an autocratic prince."

The Federal Assembly

The Federal Assembly or Lower Chamber will consist of 250 representatives and not more than 125 representatives of the States. Every Federal Assembly, unless sooner dissolved, shall continue for five years and shall be regarded

as automatically dissolved after five years. The seats in the Federal Assembly allotted to British Indian Provinces are to be filled by a system of *indirect* election by members of the Provincial Assembly (and not by the general electorate). The distribution of British Indian seats in the Federal Assembly also is on communal basis. There are 19 seats reserved for Scheduled Castes, 6 for Sikhs, 82 for Muslims, 4 for Anglo-Indians, 8 for Europeans, 8 for Indian Christians, 11 for Commerce and Industry, 7 for Landholders, 10 for Labour and 9 for Women. (*See* Appendix B for further details). Allocation of seats *among* the States themselves is on the basis of population, i. e , the representation is proportional. But it must be noted that the States, *as a whole,* get 33 per cent of the total seats in the Lower Chamber, although their population is only 23 per cent of the total Indian population.

General Provisions

The Council of State shall choose from its members one President and one Vice-President of the Council, while similarly the Federal Assembly shall choose one Speaker and one Deputy Speaker. No person is to be appointed as a representative of a State in either Chamber, unless he is a British subject or a Ruler or a subject of an Indian State, which has acceded to Federation *and* is, in the case of a seat in the Council of State, not less than 30 years of age and, in the case of a seat in the Federal Assembly, not less than 25 years of age. (The age restrictions do not, however, apply to a ruling prince.) Similarly, a representative of British India in either Chamber must be a British subject or a subject of

a federated State; for the Council of State, he must not be less than 30 years of age and for the Federal Assembly not less than 25 years of age. A person is disqualified from being a member of either Chamber, (i) if he holds any service other than those specifically exempted by the Act, (ii) if he is of an unsound mind, (iii) if he is an undischarged insolvent, (iv) if he is convicted or found guilty of corrupt practices in elections, and (v) if he is convicted of any grave offence. The power to (*a*) summon and appoint places for the meeting of the Chambers, (*b*) to prorogue them, and (*c*) to dissolve the House of Assembly is vested in the Governor-General in his discretion.

Powers and Functions of the Federal Legislature

The powers and functions of the Federal Legislature, like those of Provincial Governments, are of three kinds: (1) legislative, (2) deliberative and (3) fiscal.

(1) In regard to legislative powers and functions, the Federal Legislature can legislate generally on all matters falling within its field (*See* Appendix A). These powers are, however, limited by the Governor-General's over-riding powers and his powers of withholding assent to Bills or reserving them for consideration by the Crown. The Governor-General can stop the course of a Bill, if he thinks it affects the discharge of his special responsibility of maintenance of peace in India; and his prior consent is necessary in legislation or discussion on several matters relating to States, foreign powers, excluded areas and the "special responsibilities." All laws passed by the Federal Government, which are repugnant (contrary) to the laws passed

by Parliament, or to any Order-in-Council, or which encroach upon the discretionary powers or special responsibilities of the Governor–General, or affect the reserved departments, the relationships of the Crown with Indian States, or such subjects as have not been transferred to the sphere of Federal legislation by a federated State, are *ipso facto* invalid and void.

(2) A member of the Legislature can express his views on any matter of public importance by proposing a resolution on the matter and cause discussion thereon. Similarly, he can put interpellations (questions) on matters of public interest. Generally speaking, discussion or interpellations on the conduct of Princes or affairs in States (not related to Federal subjects), foreign affairs, frontier questions, Governor–General's relations with Provinces in discretionary matters and special responsibilities, the conduct of Federal Court and High Court judges, is not allowed. Lastly, a member can bring in a motion for adjournment of the House to consider a matter of urgent public importance, which is a method of mild censure.

(3) For fiscal powers, *see* below "Financial Procedure."

Legislative Procedure

A Bill other than a Finance Bill may originate in either Chamber. A Bill shall not be deemed to have been passed, unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by Chambers. When the Bill is passed by both Chambers, it is presented to the Governor-General, who either assents to it in the name of His Majesty, or withholds his assent (*i. e.*, disallows it), or reserves it for the consideration of His Majesty

or returns it for further consideration to the Chambers. In the event of disagreement, as well as under certain other circumstances, the Governor-General can summon a joint sitting of the two Chambers. If at the joint sitting of the Chambers, the Bill, with or without amendments, is passed by a majority of the total number of members of both Chambers present, the Bill is deemed to have been duly passed by both Chambers.

Financial Procedure

The Governor-General causes to be laid before both Chambers a statement of the *estimated* receipts and expenditure of the Federation for the ensuing financial year (April 1 to March 31), referred to as the annual financial statement. The estimates of expenditure in the financial statement must show separately : (1) expenditures charged upon the revenues of the Federation, *i. e.*, expenditures which are *non-votable* by the Legislature —(In regard to these expenditures, the Legislature can neither reduce nor reject the demands of the Executive)— (2) other, i. e., *votable* expenditure, i. e., expenditure which is subject to the vote and control of the Legislature. Similarly, it must separate the *current* from the *capital* expenditure, and it must also show what part of the expenditure is necessary for the discharge of the " special responsibilities. "

The *non-votable* expenditure includes (1) the salary and allowances of the Governor-General and his personal staff, (2) debt charges, (3) salaries and allowances of Counsellors, Ministers, the Financial Adviser and his staff, the Advocate-General, the Chief Commissioner, and the Federal Court judges, (4) expenditure incurred in respect of the " reserved

subjects," (5) the expenses incurred by the Crown Representative and (6) grants for the excluded areas or for satisfaction of decrees passed against the Federation. This non-votable expenditure forms about 80 per cent of the total Federal expenditure, the remaining 20 per cent being votable. The votable expenditure is submitted as demands for grants first to the Federal Assembly and later, if the Federal Assembly sanctions the grants, to the Councial of State. No demand that is refused or reduced by the Assembly is submitted to the Council of State unless the Governor-General so directs. Either Chamber may assent, or refuse to assent, or reduce any demand. If the two Chambers disagree, a joint session is held. No money Bill can be moved except *on the recommendation* of the Governor-General, *i. e.*, no private member can introduce a money bill* and only a Government Member can do this with the sanction of the Governor-General. The Governor-General has the power to restore a grant, refused by the Legislature, if it refers to any of his special responsibilities. Any non-financial Bill, which indirectly involves the raising of money either by taxation or by loan for its execution later on, can only be introduced in the Assembly (and not in the Council of State) and that too only with the consent of the Governor-General previously obtained.

* A money bill, which no private member can introduce, is a Bill or amendment making provision for the demand of a grant, for imposing or increasing a tax, or for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken by the Federal Government, or for declaring any expenditure to be expenditure charged on the revenues of the Federation or for increasing the amount of any such expenditure.

CHAPTER VII

THE PROVINCIAL EXECUTIVE AND THE PROVINCIAL LEGISLATURE

In Chapter III, we have already discussed the nature of Provincial Autonomy. This Provincial Autonomy has already been introduced in the Provinces (on April 1, 1937). The Provinces, which will be among the Units of the Federation on the British Indian side, are eleven in number under the new Act: *viz.*, Bengal, Madras, Bombay, the United Provinces, the Punjab, Bihar, Orissa, the Central Provinces, Assam., the North West Frontier Province and Sind. These are to be taken as the Governors' Provinces. His Majesty may, by an Order-in-Council, create a new Province, increase or diminish or alter the area of any Province, after ascertaining the views of the Federal Legislature and of the Provincial Legislature or Legislatures concerned. In addition to the eleven Governors' Provinces, there will be six Chief Commissioners' Provinces including British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands, and the area known as Panth Piploda. A Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed in his discretion. That is to say, there is neither autonomy nor responsibility in the Chief Commissioner's Provinces.

I

The executive authority of a Province is exercised by the Governor on behalf of His Majesty, either directly, or indirectly through officers subordinate to him. It will be exercised by him in accordance with the Instrument of Instructions issued to him by the Crown. There shall be a Council of Ministers to aid and advise the Governor in the discharge of his duties, except in regard to such matters as fall within his "discretion." There are, broadly speaking, four classes of matters regarding which the Governor is to take executive action; (1) firstly, there are those matters in which the Governor is normally bound to follow the advice of his Ministers; (2) secondly, there are those matters which are specifically mentioned as falling within his "discretion" and in regard to which he need not consult his Ministers at all; (3) thirdly, there are those matters in which the Ministers may tender advice, but in which the Governor acts "in his individual judgment," i.e., is not bound to accept or follow that advice; and (4) lastly, there are those matters in regard to which, in times of *emergency*, the Governor can exercise certain "special powers" in his discretion. Apart from these powers, the Governor has the *supreme* power of declaring, in the event of a rising against the Government, that any or all of his functions shall be exercised in his discretion. The Governor's decision is final as what matters fall in the sphere of his "discretion" and "individual judgment." In regard to all such matters as require the exercise of his "discretion" or "individual judgment," the Governor acts under the directions of the Governor-General, the Secretary of State and, finally,

Parliament—which thus becomes the "chain of responsibility" and which detracts from Provincial Autonomy. The Governor is thus responsible either to the people through the intermediary of their representatives, on the one hand, or to the British Parliament through the intermediary of the Governor-General and the Secretary of State, on the other.

Special Responsibilities of the Governor

Discretionary powers are too numerous to be catalogued and they refer to numerous details of administration. The powers, falling under *individual judgment*, are of two kinds: "special responsibilities" and other minor matters specifically mentioned in various places. The special responsibilities of the Governor are as under:—

(*a*) the prevention of any grave menace to the peace or tranquillity of the Province ;

(*b*) safeguarding of the legitimate interests of minorities ;

(*c*) safeguarding of the legitimate interests of public servants ;

(*d*) securing of peace and good government in the *partially excluded* areas ;

(*e*) protection of the rights of any Indian State and of the rights and dignity of the Ruler thereof ;

(*f*) securing of execution of orders and directions issued by the Governor-General in his discretion ;

(*g*) securing of executive action in regard to provisions relating to "discrimination," in the Act. (*See* "special responsibilities" of the Governor-General in Chapter V.)

The Governor of the Central Provinces has the additional "special responsibility" of securing that a reasonable share of the revenue is spent for the benefit of Berar, while the Governor of Sind has a "special responsibility" for the proper administration of the Sukkur Barrage Scheme.

Legislative Power of the Governor

Apart from the discretionary powers, the special responsibilities and the emergency powers, the Governor possesses additional legislature power to enact *Governor's Acts*, when executive action may not be sufficient for the due discharge of his special responsibilities. The Governor's Acts shall be promulgated without the formality of their passage through the Legislature; but they must be placed before Parliament later on for approval and, before enacting such Acts, the Governor must obtain the prior consent of the Governor-General. Secondly, the Governor has the power to promulgate *Ordinances* i. e., temporary legislation by orders. There are two types of Ordinances: (1) Ordinances issued by the Governor during the recess of the Legislature, on the advice of his Ministers in a sphere in which the Governor is normally guided by their advice, and (2) Ordinances issued by him in his discretion, and in the discharge of his special responsibilities. The former class of Ordinances must be laid before the Provincial Legislature and will cease to operate within six weeks from the re-assembling of the Legislature, unless a prior resolution negativing them has been passed by the Legislature. They are also subject to disallowance by the Crown and can be withdrawn by the Governor at any time in his discretion. The latter type

of Ordinances can be promulgated by the Governor at any time, for six months in the first instance, but may be extended for a further period of not more than six months. This class of Ordinances is subject to disallowance by the Crown, or to withdrawal by the Governor at any time, and, only in the case of extension beyond six months, is subject to subsequent approval by the Houses of Parliament. Lastly, in the event of *failure of the constitutional machinery*, the Governor can carry on the administration of his Province by *Proclamation*, assuming to himself any or all the Provincial functions and powers and exercise them in his discretion," but any such Proclamation must be placed before Parliament. A Proclamation runs for six months but may be continued; the rule by Proclamations, however, cannot extend beyond three years at a time, by which time presumably the Constitution would be revised by Parliament.

The Council of Ministers

Except in matters for which the Governor has special and discretionary powers, the Governor is aided and advised by his Council of Ministers. The *Instrument of Instructions*, issued to the Governors, lays down that the Governor shall be guided by the advice of Ministers unless he finds it inconsistent with the fulfilment of any of his "special responsibilities." The Governor, in consultation with his Ministers, shall make rules for the more convenient transaction of business of the Provincial Government and for the allocation of functions among the Ministers. As in the Federal Government, the Governor is required to use his best endeavour to select those members of the Legislature to be his Ministers who are likely to

command the confidence of the Legislature. The salaries of the Ministers shall be such as may be determined by the Provincial Legislature, but they will not be raised during their term of office. The Governor of the Province shall further appoint an Advocate-General for the Province to advise him in legal matters and he shall have the right to address, but not to vote in, the Provincial Legislature and to perform such duties as may be assigned to him by the Governor. He has also the power to appoint an Official Minister, whenever he exercises the special emergency powers (against violent crimes designed to overthrow Government), to act as his mouth-piece in the Legislature. Such an Official Minister, like the Advocate-General, will possess all ordinary powers of a Member except the right to vote.

II

In each Governor's Province there shall be a Provincial Legislature consisting of the King, represented by the Governor and a Legislative Assembly. In six Provinces, viz., Bengal, United Provinces, Madras, Bombay, Bihar and Assam, there shall be a Legislative Council as well as a Legislative Assembly. In the other Provinces, there will be a Legislative Assembly only. That is to say, in these above six Provinces, the *bi-cameral (two-chambers) system* has been introduced as in the Federal Legislature. This system has been introduced to check any hasty legislation by progressive political parties in the Lower Chamber; it has, however, been suggested that, firstly, the existence of large *zemindari* interests, secondly, the predominance of the Congress party in these Provinces

and, thirdly, the necessity of safeguarding European interests in some of these Provinces necessitated the institution of the Upper Chambers in these Provinces. The advocates of the bi-cameral system base their case on four main grounds: (1) that when the franchise is widened, democracy might develop into "mobocracy" which will be checked by the Upper Chamber; (2) that the bi-cameral system makes it possible for people of status, experience and expert knowledge to enter legislatures; (3) that in democracies, like Australia and the United States, the existence of the Second Chamber has been a security against abuse of power; and (4) lastly, it is better that the Second Upper Chamber rather than the Governor should act as a brake upon the Lower Chamber The opponents of the system, on the other hand, state: (1) that the Second Chambers will be the negation of democracy and will act as hindrances to very urgent social and economic reforms; (2) that the establishment of Second Chambers, is a costly luxury; (3) that the experience of Second Chambers, in most countries (particularly England), has been very unhappy; for these Chambers are packed with conservative and vested interests and lead to delay, waste and log-rolling.

The Legislative Assembly

The composition of Provincial Legislative Assemblies in each Province is given in Appendix B. The membership of the Assemblies has been a very controversial issue, which was finally settled by the British Government's *Communal Award* of 1932, as modified by the *Poona Pact* regarding the treatment of general, *i. e.*, Hindu constituencies. There are as many as

eighteen separate electorates under the Act, including the general (consisting of Hindus mainly), Scheduled Castes, Muslim, Anglo–Indian, European, Indian Christian, Sikh, Women's General, Women's Sikh, Women's Muslim, Women's Anglo-Indian, Women's Indian Christian, commerce and industrial (European), Indian commercial, landholders, labour, universities, and backward areas. The size of the Houses varies from 250 in Bengal to 50 in the N. W. F. Province. A small Muslim majority has been assured in Sind and Bengal, while Muslims have an absolute majority in the Punjab and the N. W. F. Province. In the others, Hindus predominate, though not very markedly in Assam, where, as well as in Bengal, the Europeans are in a position to hold the balance of power under certain circumstances.

The Legislative Councils

The composition of the Legislative Councils differs in different Provinces (*See* Appendix B.) The size of the Councils varies from 65 (maximum) to 21 in Assam (minimum). They are to be constituted in part by the Governor by nomination (maximum 10 in Madras, minimum 3 in several Provinces), and in part by election. The election is partly direct and partly indirect. Thus, in four Povinces, *viz.*, Madras, Bombay, U. P., and Assam, all the seats will be filled by election from special constituencies created for the purpose; and in Bengal and Bihar, nearly 40 per cent of the seats will be filled by indirect election by the Legislative Assemblies, the remaining being direct. In other Provinces, of cource, there are no Legislative Councils, but only Legislative Assemblies.

General Provisions

Every Legislative Assembly, unless sooner dissolved, shall continue for five years from the date of its first meeting, after which it will be automatically dissolved. After dissolution, there will be a general election for the Legislatures. The Legislative Assemblies will elect the British Indian representatives to the Federal Assembly under the system of indirect election proposed by the Act. Every Legislative Council shall be a permanent body, not subject to dissolution, but one-third of the members thereof shall retire in every third year. Members of both Chambers must be British subject or subjects of Federated States or such other States as may be prescribed. Their disqualifications are as in the Federal Legislature (*See* Chapter VI). No persons can be members of the Federal and Provincial Legislatures at the same time. Proceedings in the Provincial (as in the Federal) Legislatures shall be in English but with permission to persons insufficiently acquainted therewith to use another language.

Legislative Procedure

The general procedure in legislation is similar to that in the Federal Legislature, with some distinctions. Thus, where two Chambers exist, a joint sitting of the two Chambers is called only if a Bill is not presented for assent within a year after it has been sent by one Chamber to another, though the period may be shorter for a bill relating to finance or any "special responsibility." At a joint sitting, the passage of the Bill depends upon a majority vote as in the Federal Legislature. A Bill which has been passed by the Provincial Legislature may

be assented to, refused assent or reserved for the consideration of the Governor-General. The Instrument of Instructions says that any Bill shall be reserved if it is repugnant (contrary) to an Imperial Act, seriously derogates from the position of the High Court, affects Permanent Settlement or appears to provide for "discrimination." A Bill reserved may be assented to and an Act assented to by the Governor disallowed by the King in Council as in the case of the Federal Government.

Financial Procedure

The Budget or the annual statement of the estimated receipts and expenditure is laid before both Chambers. Ordinary Bills may originate in either Chamber, but a finance or money bill can originate only in the Legislative Assembly (the Lower Chamber). Secondly, no proposal for the imposition or increase of taxation or the appropriation (use) of public revenues or imposing any permanent charge upon the revenues, can be made without the *recommendation* of the Governor. This means that a *money bill* cannot be introduced by a private member, but only by a Minister of the Government. The Provincial Budget must show separately (*a*) expenditure *charged* upon the revenues of the Province, otherwise called *non-votable* expenditure, and (*b*) other expenditure proposed to be made out of Provincial revenues, *viz., votable* expenditure. It must also indicate any sums required by the Governor for his "special responsibilities."

The following kinds of expenditure are charged on the revenues and are *non-votable* : salary and allowances of the Governor and expenses of his Office, debt charges, salaries and

allowances of Ministers and of the Advocate-General, salaries and allowances of High Court judges, expenditure for administration of the excluded areas, expenditure required to satisfy a decree or award of a court against the Provincial Government, any other expenditure charged on the revenues by the Constitution or by an Act of the Provincial Legislature. All these expenditures, however, except those of the Governor and his Office can be *discussed*.

Miscellaneous

As in the Federal Legislature, the members of the Provincial Legislature have the rights to ask questions (interpellations) on matters falling within the Provincial sphere, to pass resolutions on any such matters, and to bring in adjournment motions to censure Government on any urgent matter of public importance.

The Chief Commissioners' Provinces

The Chief Commissioners are appointed by the Governor-General in his discretion and will hold office during his pleasure. Delhi, Ajmer-Merwara, and Andaman and Nicobar Islands have no legislatures. Normally, the Federal Legislature has full legislative authority over them, except in the case of British Baluchistan and the Andaman and Nicobar Islands, for which the applicability of Federal laws is subject to modification or supersession by regulations made by the Governor-General subject to disallowance by the Crown. The Chief Commissioner is directly subordinate to the Federal Government and, therefore, it may be said that in respect of the Chief

Commissioners' Provinces, the new Constitution is "unitary" to some extent. The Chief Commissioner of British Baluchistan is under the control of the Governor–General in his discretion and not under that of the Federal Government. Coorg has a Legislative Council of its own, the constitution, powers and functions of which remain unchanged until further provisions are made by the Crown by Order–in–Council; but it is otherwise subject to control by the Federal Government, like Delhi, Ajmer–Merwara, and Panth Piploda.

Excluded and Partially Excluded Areas

Certain areas are declared to be Excluded Areas and Partially Excluded Areas. The former will be directly under the legislative and executive control of the Governor of the Province concerned; the latter will be partly under his control (to the extent of his "special responsibilities") and partly under that of the Provincial Government. No Act of the Federal or Provincial Legislature will apply to the totally Excluded Areas unless the Governor so directs, with or without modifications, while the Governor himself can make regulations in his discretion for the government of the Areas. In regard to Partially Excluded Areas, Federal or Provincial laws will apply except where the "special responsibilities" are involved.

CHAPTER VIII

DISTRIBUTION OF LEGISLATIVE POWERS

In every Federation there has to be a clear-cut division of legislative authority, so that there should be no overlapping or conflict between the Federal Government and the Units of Federation. As regards British India, there are three legislative lists : the Federal List, the Provincial List and the Concurrent List. As regards the federating States, there will be only one list, *viz.*, a portion of the Federal List, mentioned in the Instrument of Accession by each State, covering only those subjects which it is prepared to assign to the Federation, the remaining legislative powers being reserved by the State. The Lists are given in Appendix A.

Federal Legislative List

The Federal Legislature has the exclusive power to make laws, within the ambit of its List, for the whole or any part of British India and for any Federated State (to the extent of the assigned subjects according to the Instrument of Accession). The Federal List contains altogether 59 matters, of an all-India importance, the most important being Defence, External Affairs, Federal Railways, Posts and Telegraphs, Customs, Income Tax, Currency and Banking. The Federal Legislature will have the power to make laws with respect to matters in the Provincial List for the Chief Commissioners' Provinces.

Moreover, the Federal Legislature has an emergency power to legislate for the Provinces even in regard to the Provincial List, if the Governor-General issues a proclamation that an emergency does exist.

Provincial Legislative List

The Provincial Legislatures have the exclusive Power to make laws for the respective Provinces. The List contains 54 matters, which are exclusively Provincial, important amongst which are : Public Order, Police, Local Government, Public Health and Sanitation, Agriculture, Land Tenures and Land Revenue, Forests, etc. These matters are capable of Provincial administration and are also mainly of Provincial interest.

Concurrent Legislative List

As the Joint Committee point out " Experience has shown ......that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature. " In some matters, joint action and legislation are desirable. The Concurrent List is thus the " twilight zone " of legislative power which may be exercised both by the Federal Government and the Provincial Government. The List is divided into two parts : in the first part, there is a complete power for legislation by both Governments, but in the second part, the Federal Legislation will be only *directional i. e.*, only meant for general guidance of Provincial laws. The most important matters covered by the first part of this List are : Criminal Law and Procedure, Civil Procedure, Marriage and Divorce. On the other hand, in the second part there are Factories, Labour Problems and Trade Unions, Electricity etc.

Conflict of Laws

The lists in each case are as exhaustive as possible and a serious attempt has been made to avoid legal conflicts of the kind that have arisen in other Federations. Obviously, if the Federation legislate in a matter which is exclusively Provincial or a Provincial Government legislate in regard to a matter which is directly and exclusively Federal, such laws are void. In the concurrent sphere, however, conflict will necessarily arise. The usual doctrine adopted in other federal constitutions is that " a Federal act supersedes or overrides a provincial or state law." In the act of 1935, however, this doctrine is modified. (1) firstly, if any Provincial law is repugnant (contrary) to any provision of a Federal law,—whether that Federal law is under the Federal List or the Concurrent List,—it is void to the extent of the repugnancy only; (2) secondly, even if a Provincial law is so repugnant to a prior Federal Act, if it has received the special assent of the Governor-General in his discretion or of the Crown, the Provincial law will prevail in that Province to which it refers; but the Federal Legislature may vary such an Act with the permission of the Governor-General granted by him in his discretion.

If any law of a Federated State is in conflict with any Act of the Federal Legislature in regard to any subject which the Ruler has, by his Instrument of Accession, accepted as a federal subject, the Act of the Federal Legislature, whether passed before or after the law of the State, shall prevail.

The Federal Court will decide the questions of repugnancy and validity.

CHAPTER IX

LOCAL SELF-GOVERNMENT

Local Self-Government is not a part of the Constitution Act of 1935, because, under the Act, Local Self-Government as a subject has been assigned to the Provinces and it is for them to make laws relating to the local bodies and their constitutions. The Legislative Lists (Appendix A) provide that the Provincial Governments should make laws regarding "Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration." It is to be noted that local government in cantonment areas in British India will be subject to Federal legislation and control.

Historical

Lord Mayo laid the foundations of local self-government by the Act of 1870, which gave wide powers to local bodies. Local bodies obtained grants-in-aid from the Provincial Governments, but they were largely under the strict control of the Provincial Governments also. The Act of 1882 introduced a more democratic system of elections, required half of the members of municipalities to be elected and half to be nominated by Governments, permitted certain municipalities to elect their own Presidents, and established local boards in addition to city municipalities. Local boards were meant for the

village population by districts and *taluks.* The Government of India Act of 1919 for the first time entrusted local self-government to a Minister responsible to the people in the Provincial legislature. The new Constitution continues this system.

Importance of Local Self-Government

There are several reasons why Local Self-Government is regarded as an important part of the political organisation of a country. In the first place, it is neither possible nor desirable that Provincial authorities ruling from long distances should interest themselves in the detailed administration of local areas, their requirements of civic life, such as street-lighting, water supply, scavenging and drainage etc. They have neither the time nor the means to manage such things. Secondly, the local authorities are better fitted to perform such functions because of better knowledge of local conditions and special difficulties. Thirdly, it is the experience of most countries that the work is done more *economically* and efficiently, if local authorities are directly responsible for such work, because the people in the district, *taluk* or village concerned feel a sense of responsibility for the money which they themselves have to raise. Fourthly, local self-government trains the citizens and villagers for public work and creates in them patriotism, enthusiasm and political interest which are highly essential to the working of democracy.

Types and Functions of Local Bodies

There are four main types of local bodies: (1) Municipalities including Corporations in the Presidency towns and other

towns; (2) Local Boards, including District and Taluka local boards; (3) Village Panchayats in the villages; (4) Improvement Trusts and Port Trusts. Their functions are mainly the following :—

(i) Public safety including provision of fire engines, street lighting etc.

(ii) Sanitation, including street sweeping, scavenging, drainage, maintenance of free hospitals for the poor, inoculation and vaccination, prevention of epidemics, etc.

(iii) Public Convenience, including water supply, road construction, registration of births and deaths, cattle pounds, etc.

(iv) Education, including primary education, etc.

(v) Public recreation, including public parks, playing grounds, etc.

(vi) Enlightenment, including museums, libraries and reading rooms. etc.

Some of these functions are compulsory, others optional: those falling in the first four groups are compulsory more or less.

Municipalities

There are altogether 781 Municipalities in India. There are two main kinds: the City Municipalities, and the Town Municipalities. The bigger City Municipalities in Bombay, Calcutta, Madras, Karachi and Rangoon are called Municipal Corporations. Their powers are somewhat more ample than those of the other Municipalities. The Municipalities derive their income from octroi duties, house and land taxes, taxes on

professions and trades, tolls, taxes on vehicles, income from markets, libraries and dispensaries, school fees, scavenging fees, drainage rates, water rates etc, and taxes on animals. In addition to these sources of income, they also receive grants-in-aid from the Provincial Governments. In each city and town municipality, there is a Municipal Committee entrusted with regulative and executive functions. In most Provinces, the Municipalities elect their own Presidents, while from one-half to three-fourths of the members are elected, the remaining being nominated by the Governments. Important reforms are being effected in various Provinces in the constitution and powers of local bodies by the new Provincial Governments under the Constitution of 1935. The Municipalities are subject to supervision of the District Collectors and Commissioners who are empowered to keep supervision over the expenditures and budgets. Similarly, these officers have to keep the Municipalities within their powers and bring to their notice and to that of Governments any breach or excess of functions. A Provincial Government can suspend or abolish a Municipality, if there is gross mismanagement of affairs and funds.

Local Boards

The duties, functions and powers of the Local Boards in the rural areas are similar to those of Municipalities in urban areas. There are two main types of Local Boards—District Local Boards and Taluka Local Boards. In some places there are also Panchayat Boards. The Local Boards are not so representative as the Municipalities. However, recently both the electorates as well as the basis of election in the Boards are amplified. There are separate electorates based on property,

qualifications etc. for the two kinds of Boards. Today there are about 107 District Boards and 584 Taluka Boards in India. Their incomes are derived from (1) Local Fund, which is a small cess on lands collected along with Land Revenue by Provincial Governments on their behalf, (2) grants-in-aid from Governments, (3) tolls, school fees, ferry charges, medical charges, etc. The above powers are assigned to District Local Boards, while the Taluka Boards have no such powers and get their funds from the District Local Boards.

Village Panchayats

In ancient India, the civic affairs of the villages were managed by *Panchayats*, but the system fell into disuse for several centuries. Recently efforts have been made in several Provinces to revive it. But the modern Panchayats are of a different kind from the early ones. The Bombay Act of 1933 is typical of the modern Panchayats: According to this Act, a Village Panchayat can be established on an application being made by 20 persons in a village or on the recommendation of a District Board at the suggestion of the Collector. There are five to eleven members, elected by the villagers, and, in some cases, the Collector has the power of appointing not more than two members. The Patel of the village is always a member *ex officio*. Generally everyone above the age of 21 has the right to vote; *i. e.*, there is an adult franchise. The president of the Panchayat is called *Sarpanch*, who is elected by the members, holds office for one year, and is eligible for re-election.

The main functions of Village Panchayats are: water supply, street cleaning and care of reservoirs of water and of

canals, construction of roads, dams, bridges etc., protection of the health of the villagers, care of public buildings, pastures, woods etc., street lighting, control of fairs, bazars, etc., and maintenance of burial places and crematories. Their sources of income are house rates and land cesses, pilgrim taxes, taxes on fairs and festivals, octrois, and one-fifth of the Local Fund. Loans may also be advanced to them by the Local Boards.

Port Trusts and Improvement Trusts

The management of important ports in British India, like Karachi, Bombay, Madras and Calcutta, is entrusted to Port Trusts, which have been under the control of the Central Government under the old Constitution, but which are now made Federal. The declaration and delimitation of the major ports in Federal India and the constitution and powers of the Port Authorities are the concern of the Federal Government. The Port Trusts have a Chairman and a staff, while there are representatives of commerce and industry and members nominated by the Government in the Committees of the Port Trusts. The main functions of the Port Trusts are improvement of ports and facilities available therein, the construction of docks and their management and repair. Their main source of income is port dues which are collected from ships and boats, and importers and exporters of goods.

Improvement Trusts are established in some of the big cities like Bombay, Calcutta, Madras, Cawnpore, Allahabad, Delhi, Karachi etc. Their functions are improvement of the layout and planning of the city, housing of workmen in industrial towns, improvement of city communications, etc.

CHAPTER X

INDIAN STATES AND THE FEDERATION

The States in India are the relics of history, being that part of India which was not annexed or otherwise brought under the direct suzerainty of the British Government. At present there are over 600 such States in India with a total area of about 700,000 square miles and a population af about 7 crores. There is,, however, nothing like homogeneity amongst these States, as they vastly differ from one another in size, in their internal sovereignty and rights, in their stage of economic and social development etc. As the Montagu-Chelmsford Report says, " they are in all stages of development, patriarchal, feudal, or more advanced, while in a few States are found the beginnings of representative institutions. " Then there are various classes among the States, Hyderabad, Mysore, Baroda, Kashmir being classed as major states of the first class; Gwalior, Indore, Bhopal, Udaipur, Jaipur etc as second class, and so on down to the small non-salute States, *Jagirs*, and *Inams*. Their rights and relations with the Paramount Power (the Crown) are based upon treaties, *Sanads* and engagements, There are two things, more or less, common to them all, however. In the first place, in all of them there is a personal rule of the Prince and his control over legislation and administration is absolute, except where it is restricted by the encroachment of the Paramount Power. Secondly, be they large and powerful

States like Kashmir and Hyderabad or be they small Jagirs, they are wholly outside British India.

The Relations of Crown and States

The relations of the Paramount Power or Crown with these States were largely conducted through the Provincial Governments prior to 1919. On the advice of the Montagu-Chelmsford Report they were in a great majority of cases rendered direct with the Governor-General. Under the new Constitution, as described in Chapter V, the Crown Representative will be in charge of such relations, and even where the States have through their Instruments of Accession assigned any subjects to the Federal sphere, action will have to be taken by the Federal Government through his agency. The control of the Crown is in most cases exercised through the Agents and for this purpose the States are grouped under various Agencies, such as the Central India Agency, the Deccan States Agency, the Eastern States Agency, the Gujerat States Agency, the Punjab States Agency, the Madras States Agency etc. Only Hyderabad, Mysore, Baroda, Jammu and Kashmir, Gwalior, Bhutan and Sikkim have direct political relations with the Government of India at present.

Autocracy in the States

The States are mostly internally sovereign, while their external sovereignty is, broadly speaking, in the possession of the Paramount Power: *i. e.*, the States can do many things within their territories, but their relations with foreign countries or other States or Provinces are controlled by the Crown.

Mysore, Baroda, Kashmir and Hyderabad and some few other States have erected representative advisory and deliberative Councils, but "in no case is there a State constitution which is binding on the Rulers." In many cases, the State treasury is the same as the privy purse of the Prince, with the result that the welfare activities of the States, except in a few cases, have remained unsatisfactory. The Rulers are not subject to any law, while even their officers acting in their behalf are not amenable to the jurisdiction of courts. Thus, the essential feature of the All-India Federation, which we noted, is that there is going to be a union of democratic Provinces and autocratic States.

The Chamber of Princes

On the suggestion of the Mont-ford Report that there should be a permanant consultative body, the Chamber of Princes or *Narendra Mandal* was created in 1921. The Chamber is a purely deliberative, consultative and advisory body, and discusses matters referred to it by the Viceroy and other questions common to the States or common to British and State Indias, but it cannot discuss treaties or internal affairs of any State or the powers or actions of individual rulers. The Chamber consists of 109 Princes who are members in their own right and 12 other members elected by the Rulers of 127 other States by a system of group-voting. The Chamber has done much useful work in regularising the rules of political practice in issues affecting States as regards succession, boundary disputes, regency etc.

The States' Attitude towards Federation

Throughout the past century or more, the States have been brought into inextricable economic and political relations of unity with British India. They are united by the establishment of railways, posts, telegraphs, telephone and wireless. They are affected by the policy adopted by the British India in the matters of currency, tariffs and banking. The Chamber of Princes has helped the feeling of unity among the Princes, while the growing nationalism in India has found its way into the States also stressing the essential unity of the peoples of British and State Indias. There is, therefore, a natural urge towards federation. However, there have been additional reasons for the acceptance of the federal idea by the Princes. In the first place, they feared that if British India got more powers at the Centre, it might gradually take the place of the Paramount Power and begin to dominate the States. Secondly, in important issues such as defence and tariff policy, they felt that they should have a voice, as such questions affected the States very vitally. Thirdly, they were anxious to recover the ground which they had lost to the Crown gradually during the past, due to the latter's subtle encroachment through the authoritative interpretation of the treaties and *sanads*. This, then, was the crucial time when all these rights and advantages were to be secured. On the British side, the inclusion of the States in the Federation was welcomed for quite different reasons. The British Government was anxious to confer a measure of responsibility at the Centre, but to make the experiment safe it was desirable to create a Conservative Federal Legislature. This could obviously be achieved by granting more than numerically

proportionate representation to the States, which could be relied upon to support the wishes of the Crown in matters of conflict, and also by promising to the States a relaxation of the Crown's control over them, and other benefits.

The Instruments of Accession

The documents by means of which the States will enter the Federation are called the Instruments of Accession,(which must be clearly distinguished from the Instruments of Instruction, issued by the Crown to the Governor-General and the Governors). In the case of Provinces, inclusion in the Federation is automatic under the Act; in that of the States, inclusion or accession is *voluntary*, dependent upon the Rulers' signing the Instruments of Accession and upon the Crown's acceptance of those Instruments. The Federation will be proclaimed as soon as a sufficient number of States have acceded, so as to fill not less than half the 104 seats of the Council of State and so as to represent a total population of about 40 millions. The Instrument of Accession must specify the matters on which the Federation is to have power to legislate for the State concerned and it will be binding upon the State to that extent. The Joint Committee suggested that a certain number of subjects from the Federal List should be commonly introduced into all the Instruments of Accession. This suggestion will be adopted.

Legislative and Financial Relations

The Federal Legislature will have the power to pass laws in regard to the *assigned* subjects (according to the Instruments of Accession) only, so far as the States are concerned. However,

the compliance of the States to such Federal Legislation will be secured not directly but through His Majesty's Representative. On the other hand, the representatives of the States will have a voice in the determination of policy in all matters of Federal and all-India interest. In regard to matters affecting British India only, the States' representatives, it is hoped, will observe a convention not to vote on any bill or resolution affecting British India only; but it was made clear to the Joint Committee by the States' spokesmen that where the collective responsibility of the Ministry was involved, *e. g.*, when a vote of censure was brought, it may be necessary for them to exercise their right to speak and vote.

The problems of financial relations between the States and Federal Government were examined by the Indian States Enquiry Committee (Financial) of 1932, presided over by Mr. Davidson. A generous provision has been proposed in the Act on the advice of this Committee, in order to secure the accession of States to the Federation. A system of *debits* and *credits* has been proposed. Thus, the monetary value of the " privileges and immunities " enjoyed by the States is to be regarded as being on the *debit* side; while any cash contributions (tributes), or military cessions of territories for defence by the States are to be regarded as being on the credit side. " Privileges and immunities " include the following ; *(a)* advantages and rights in respect of sea customs and salt, enjoyed by States; *(b)* sums receivable for surrendering the right to levy internal customs duties etc., *(c)* postal privileges, *(d)* currency privileges etc. Cash contributions include *(a)* tributes payable to the Crown in acknowledgment of suzerainty, *(b)* contributions in lieu of

military assistance by States to the Crown, and contributions for military protection, (*c*) tributes payable formerly to another State but now to the Crown due to lapse or conquest of the State. Where the *debits* are greater than the *credits*, no further payment is to be made by the States to the Crown or the Federation; but where the *credits* are greater than *debits*, the difference will be remitted to the State concerned by the Federal Government and this remission will be spread over a period of not less than 20 years. The arrangement thus arrived at will be stated in the Instrument of Accession of each State.

CHAPTER XI

THE CIVIL SERVICES

"The system of responsible government," say the Joint Committee in their Report, "to be successful, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience, secure in their position during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide." The Civil Services, which are charged with this function, are classified as follows: (1) the All-India Services, (2) the Central Services, and (3) the Provincial Services. These are also called the Services of the Crown in India. From the constitutional point of view, there are two main questions to be considered: firstly, the future recruitment of these services, and, secondly, the rights and privileges to which they are entitled.

The Recruiting Authorities

The Secretary of State continues to recruit to three of the All-India services, *viz.*, the Indian Civil Service, the Indian Police Service (which two together constitute the "Security Services," and to the Indian Medical Service (Civil). He will also make appointments to the Foreign, Political and Ecclesiastical Departments of the Federal Government, and to the Irrigation Service of the Provinces. In addition, he has the

reserve power to make appointment to any other Service as he may deem necessary for the discharge of functions which the Governor-General is required to exercise in his discretion. As regards Central Services, in the case of the Post and Telegraph, and Customs Services, the recruitment will be made by the Federal Government, but the superior Railway Services will be recruited by the Federal Railway Authority. Recruitment to the Provincial Services (except the superior Irrigation Service) will be made by the Provincial Government. There is no proportion laid down regarding respective strengths of the Indian and British elements in the Services to which appointments will be made by the Secretary of State; it is provided that this will be decided by the Secretary of State himself from time to time. An announcement was made by the Secretary of State in July 1936 that in the case of the Indian Civil Service, after 1937 the majority of the vacancies reserved for Indian candidates would be filled at the Delhi Examination in India, while the London examination would be restricted to Europeans and Indians who had their university education in England, and that the European vacancies might be filled without examination.

Public Service Commissions

There will be a Federal Public Service Commission for the Federal Government and a Provincial Public Service Commission in each of the Provinces. (By agreement, the same Provincial Commission may serve two or more Provinces, as in the case of Bombay and Sind.) The Governor-General in his own discretion will appoint the Federal Commission, while the Provincial Commission will be appointed by the Governor in

his discretion. One–half at least of the Members must be officials. The Commissions conduct examinations for appointments to the respective services. Normally they must be consulted on all matters relating to recruitment, promotions, transfers, disciplinary action, compensation etc. No consultation is, however, necessary as regards communal representation or the subordinate police service, except for claims of compensation.

Rights and Privileges

Every person who is a member of a Civil Service of the Crown in India holds office during His Majesty's pleasure and he shall not be dismissed by any authority subordinate to that by which he was appointed. Sex shall not be regarded as a disqualification in any Civil Service in India unless specially excluded by an order of the appropriate authority. Protection to the Services is granted by provision of indemnity for *past* acts (especially of police officers): permission of the head of the Government concerned is necessary before a civil or criminal action is taken against any officer regarding his *official* acts, done prior to Provincial Autonomy or Federation. For acts subsequent to this, there is protection against criminal proceedings in the prior sanction of the head of the Government for prosecution: and in civil matters, the costs incurred or awarded by the Court may be charged to public revenues. Pensions are secured by being charged on Indian revenues and, in the case of retired officials permanently resident outside India, are free from Indian taxation.

CHAPTER XII

THE JUDICIARY

It is the function of the Legislature to enact laws; it is the function of the Executive to execute and administer the laws and thus carry out the wishes of the Legislature as expressed in the laws; it is, however, the function of the Judiciary to interpret the laws and decide disputes between individuals or between individuals and Governments or between different Governments. There are two kinds of matters for suits civil and criminal; correspondingly, there are Civil Courts and Criminal Courts. Then, there are two kinds of jurisdictions: original and appellate, *i. e.*, a matter may be heard in the first instance in the Court, or it may be brought to it in appeal against the decision of an inferior Court.

The Federal Court

A Federal Court is an essential element in every Federal Constitution. It is at once the interpreter and the guardian of the Constitution itself; secondly, it is a tribunal independent of the Federal, Provincial and State Governments to decide on questions concerning the respective spheres of the Federal, Provincial and State authorities. The Federal Court of India has both original and appellate jurisdictions. (1) Its original jurisdiction is *exclusive*, (i. e., no other Court has this original jurisdiction,) in the interpretation of the interpretation of the Act itself or of any Order-in-Council the interpretation of Federal laws

or of Instruments of Accession (of States) or Agreements made thereunder (except where such jurisdiction is expressly denied in an Agreement) and where the disputing parties are any two or more of the following, viz., the Federation, Provinces or Federated States. (2) Its appellate jurisdiction is exclusive from judgments of High Courts in British India on a certificate that the case involves a substantial *question of law* relating to the interpretation of the Act etc., and also from judgments of High Courts in a Federated State by way of a "special case" stated either on the initiative of the High Court or of the Federal Court. The Federal Legislature has the power to enlarge the appellate jurisdiction of the Federal Court. The Privy Council has the final appellate power in appeals brought to it from a decision of the Federal Court. It is laid down that all authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court in the enforcement of its orders and decrees.

The Federal Court is at present composed of a Chief Justice of India and two puisne (*i. e. junior*) Judges, but under the Act, the number of puisne judges cannot be increased to more than six, unless an address has been presented to His Majesty through the Governor-General by the Federal Legislature. A person is not qualified for appointment unless he has been at least five years a judge of a High Court in British India or in a Federated State, or is a barrister of not less than ten year's standing, or has been for at least ten years a pleader of a High Court in British India or a Federated State. A person cannot become a Chief Justice unless he is, or when first appointed a Judge was, a barrister or a pleader of *fifteen* years' standing.

All the Judges, including the Chief Justice, will retire at the age of 65. Their salaries are fixed and are not subject to the vote of the Legislature. The Federal Court generally sits at Delhi, but it may sit at other places in India. It was brought into existence on the 1st October 1937.

The High Courts

The highest court in each Province is the High Court. Accordingly under the Act, the existing High Courts of Calcutta, Bombay, Madras, Allahabad, Lahore aud Patna, and other comparable Courts such as the Oudh Chief Court, the Judicial Commissioners' Courts in C. P., N. W. F. Province, and in Sind will be regarded as High Courts for the purposes of this Act. The King in Council may also declare any other Provincial Court as High Court. The High Court consists of a Chief Justice and a number of puisne (Junior) Judges. They must have been either barristers or pleaders of not less than ten years' standing or civilians who have served as District Judges for at least three years, or judicial officers not inferior to a subordinate judge or a small-cause court judge. A Chief Justice must have been a puisne Judge before appointment, but a Civilian puisne Judge must have served in that capacity for at least three years. The Judges are appointed by His Majesty and retire at the age of sixty. The High Courts have both original and appellate jurisdictions. On the original side, the jurisdiction generally extends to civil suits involving sums over Rs. 2000 or so; on the appellate side, it hears appeals from its own decisions on the original side, and also from the decisions of the District Courts in civil and criminal matters. The principal

changes effected by the Act in regard to High Courts are: (1) the complete "provincialisation" of the High Courts, which was till now partial only, in the sphere of administrative authority, and (2) the removal of the previous statutory proportion of at least one-third for civilians and one-third for barristers among the judges of the High Court, which may mean a reduction in their proportion or even perhaps in an increase, as only the future will show.

The Subordinate Judiciary

In order to avoid the undue influence of the Legislature on the subordinate judiciary, it is provided that the appointment, posting and promotion of District Judges should be made by the Governor in his individual judgment, after consulting his Ministers and the High Court. Subordinate Judges and Munsifs will be appointed by the Governor acting on the advice of the Minister, but subject to selection by the provincial Public Service Commission.

CHAPTER XIII

FINANCE

In a Federation, two distinct authorities have to raise their revenues from the same taxpayers. In order that there should be no confusion between the two taxing powers, the field for taxation open to the Federal Government is clearly separated from that of the Provinces (or States). However, even if the two fields are clearly demarcated, it is impossible that the needs of the two authorities should exactly coincide with their respective taxing powers. Thus there arises the necessity of making adjustments in addition to the initial scheme of allocation of sources of revenue. The scheme of Federal Finance, therefore, divides itself into two parts: *(a)* allocation of the respective taxing powers as demarcated in the Federal and Provincial Legislative Lists, and *(b)* the financial adjustments and transfers. The first part is clearly laid down in the Lists (*See* Appendix A): legislative power in relation to the raising of revenue and taxation is Federal, if it relates to a Federal subject, and Provincial, if it relates to a Provincial subject.

Federal Sources of Revenue

The main sources of revenue exclusively assigned to the Federal Government are:—

(i) *Customs,* including both import and export duties. These duties are levied on the frontiers and at sea-ports and are generally borne by the consumers of the goods and articles on which they are levied. The

imposition of customs duties involves wider questions of tariff and industrial policies (protection etc.), which are likely to affect both Provinces and States; also it is convenient to collect it on an all-India basis. Hence customs duties are made Federal. (No. 44 in Federal List).

(ii) *Excise.* These are duties levied on goods at the source of production, in factory or field, but excluding those levied by the Provinces on alcohol and narcotic drugs. (No. 45).

(iii) *Income Tax.* This tax is levied on all incomes except those derived from agriculture. The Provincial Governments have the power to levy a tax on agricultural incomes under the Act. Non-agricultural incomes are largely inter-provincial. (No. 54)

(iv) *Corporation Tax.* This is a tax on the incomes of corporations or companies. (No. 46)

(v) *Salt.* This is a duty on salt produced in India, and there is a corresponding import duty on salt. As Government have also a monopoly of salt, they are able to dictate the price which is much higher than the cost of production. (No. 47)

(vi) *Succession duties.* These are to be levied at the time of death on the property bequeathed by a deceased person. (No. 56)

(vii) *Railways and Posts and Telegraphs etc.* The net profits from these and similar commercial undertakings of the Federal Government are included in this source. (Nos. 7, 20 etc.)

The above are the chief sources of revenue for the Federation. The items of Federal expenditure are those which arise from subjects assigned to it under the Act in the Federal List, important among which are Defence, Public Debt charges, Civil Administration, etc. It is to be noted that the Federal Government will have the power to levy income tax in a Federated State, only if there is a provision to that effect in the Instrument of Accession. However, the Federated States will be liable to any surcharge on income tax levied by the Federal Government. Similarly, the corporation tax shall not be levied in a State until ten years have elapsed from Federation. Both in the case of the surcharge as well as the corporation tax, it will be open to a State to pay in lump sum an equivalent amount in lieu of such taxation of the subjects and companies within its territories.

Provincial Sources of Revenue

The main sources of Provincial revenue are:—

(i) *Land Revenue* This is a flat tax levied on the land by Provincial Governments. It is the mainstay of Provincial finances at present and is fixed according to the acreage, fertility and productivity of the land. (No. 39 of Provincial List.)

(ii) *Excise.* These are duties on certain named commodities manufactured or produced in the Province, such as alcoholic liquors for human consumption, opium, hemp and other narcotics, and medicinal and toilet preparations containing alcohol. (No. 40)

(iii) *Taxes on agricultural income.* This is a new source not yet properly utilised by the Provinces. (No. 41)

(iv) *Taxes on sale of goods*. This is also a new source and likely to be very fertile in the near future. (No. 48)

(v) *Stamp duties*. These are duties on court fee stamps and other legal stamps, used for registration of documents. (No. 51)

(vi) *Irrigation and Forests*. Net income, if any, from these two provincially managed undertakings. (Nos. 19 and 22)

The Financial Adjustments

The transfers and adjustments, which follow the above basic scheme of allocations, contains the following elements :—

(i) Certain duties and taxes will be collected by the Federal Government but the proceeds will be distributed among the Provinces on some definite principles. Such taxes and duties are : succession duties, Federal stamp duties, terminal taxes on railway goods and passengers, and taxes on railway fares and freights.

(ii) The Provinces will get half of the revenue from income tax collected by the Federal Government. This will be distributed among the Provinces as follows : Madras and U. P., 15 per cent each; Bombay and Bengal, 20 per cent each; Bihar, 10 per cent; Punjab, 8 per cent; C. P., 5 per cent; Assam, Orissa and Sind, 2 per cent each; North West Frontier, 1 per cent. However, the income tax revenue will not be transferred to the Provinces immediately, but according to a time-table, which lays down two periods of five years each (which

may be extended by the Governor-General in his discretion indefinitely) during which the Provincial share will be gradually increased up to the full half. It is to be noted that the remissions of contributions etc., by the Federated States will follow the same time-table as regards gradualness. (See Chapter X)

(iii) It is also laid down that duties on salt, Federal excise duties and export duties (*e, g.*, export duty on jute) shall be levied by the Federal Government, but, if an Act of the Federal Legislature so provides, there shall be paid out to the Provinces and the Federated States (if the duties are levied in them), either the whole or part of such duties. In the case of jute export duties, however, the revenue should be handed over to the jute-growing Units only and it should be not less than 50 per cent of the total proceeds. The Order in Council (based on Sir Otto Niemeyer's Report) grants 62½ per cent of the jute export duty to the jute-growing Provinces (Bengal and Bihar) and Federated States (if any).

(iv) The case of needy Provinces, unable to balance their budgets, has been considered and special subsidies are to be paid to several Provinces as follows: U. P., 25 lakhs per annum; Assam, 30 lakhs; N. W. F. Province, 1 crore; Orissa, 47 lakhs; Sind, 110 lakhs in the first year and then gradually diminishing to 55 lakhs.

(v) Further, owing to the assumption by the Federation of the pre-federation debts of the Provinces, various settlements and remissions have been made providing relief to certain Provinces.

CHAPTER XIV

DEFENCE

The Act makes no substantial changes in matters affecting the vital question of defence. It is a reserved subject and full control over it is vested in the Governor-General, subject to the Secretary of State and the Home Government. Not only is the appointment of the Commander-in-Chief of the Indian forces made by the King-in-Council, but his control over defence appointments in general is more or less complete. The act provides for the control of the Secretary of State, acting with the concurrence of his Advisers, with regard to conditions of service. The expenditure on defence, including pay, allowance, pensions, etc., of personnel, is charged on the revenues of India and although, as far as possible joint consultation with Ministers and Legislature is provided for, the Governor-General will control the military budget in his discretion. The Legislature has the right to discuss but not to vote on the defence estimates.

The Governor-General will decide as to the use of Indian troops outside India, whenever their employment is desired by the British Government for imperial purposes. But, as the Commander-in-Chief explained in one of his recent speeches, it would be possible, in case of such a request for aid by Britain to consult the wishes of the Assembly beforehand, except where the matter is obviously urgent (*e. g.*, if there is an attack on Aden or on the oil reserves of the Anglo-Persian Company

in Persia). Recently, prior to certain military manoeuvres, the leaders of the parties in the Central Assembly were taken into confidence by the Viceroy.

The Secretary of State, acting on the advice of his advisers, will frame rules as regards conditions of service in the Indian Forces. He will also hear appeals in regard to decisions on service questions not only for the forces proper but departments connected with them. Similarly, as before, in making appointments to the British section of the Indian army, regard shall be had to the fact of anyone being the son of a military or civil servant of the Crown in India.

No mention is made of the question of Indianisation of the forces, although it is suggested both by the Joint Committee, in its Report, and in the Instruments of Instruction that the defence of India must be to an increasing extent the concern of the Indian people themselves. The Instruments, accordingly, require the Governor-General to ascertain the views of his Ministers on the question of appointments of Indians in the army, as also on that of the employment of the army outside India, while in military finance the Finance Minister is to be kept in touch with the control of army expenditure.

Problem of Indianisation

However, as an expert writer on the Defence of India points out. " The armed forces under the Government of India are Indian in one sense only in that their cost is borne by the Indian people. " The British Indian Memorandum put forward a suggestion that there should be a definite programme of Indianisation of the army with reference to a definite time-table extending over 25 years. The Joint Committee, however,

scouted this idea on the ground that it was impossible to include in the Constitution Act or in any other statute a provision for the complete Indianisation of the forces within a specified period of time. Thus, " the army today remains an engine of British domination in India; it is not controlled by Indians; it is recruited from certain parts of India only with a strict regulation of quotas by tribes and communities : and there is a sort of caste system prevalent between the various elements in the army. " The Constitution does not provide for a natural and gradual transfer of the responsibility of defence to the popular element in the Legislature or seek to enable Indians to receive training in the defence of their own country.

Indian Navy and Air Force

The position of the Indian Navy is not altered by the Constitution Act but still continues to be governed by the Indian Navy Act of 1927, a British Act, which enables the Legislature, if it so desires, to place the Indian Marine on the same footing as the Dominions Navy in relation to the British Navy and under the control of the admiralty, subject to the condition that, in such a case, the costs should be defrayed by the British Exchequer. Under the new Constitution, the Governor-General may, at his discretion, transfer the naval force to the control of the admiralty, but Indian funds can be only used if the defence of India is involved. Before the war, there was no Air Force in India. At present, there are eight squadrons of the Royal Air Force in India. each squadron containing twelve machines. In pursuance of a scheme of Indianisation, the first squadron of the Indian Air Force was formed in Karachi in 1933.

CHAPTER XV

RESERVE BANK OF INDIA AND FEDERAL RAILWAY AUTHORITY

There are two important national authorities which under the Act have been kept practically outside the control of the Indian Legislature. The establishment of the Reserve Bank of India was laid down as a condition-precedent to the inauguration of the Federation in India. The Reserve Bank of India has been established (by the Indian Act of 1934) already and has been functioning since 1935. The Federal Railway Authority, on the other hand, is a creature of the Constitution Act.

The Reserve Bank of India

The Bank's functions are: (1) to maintain the currency and credit of India and the rupee-sterling ratio (at 1*s.* 6*d.*), (2) to act as the Bankers' Bank in India, (3) to act as the Bank of the Federal Government of the Provincial Governments and any of the Federal States, and (4) to float and to manage public loans on behalf of the various Governments. Its constitution is as follows:—

(*a*) The general superintendence and direction of policy are entrusted to a Central Board of Directors, consisting of a Governor, two Deputy Governors, twelve Directors and one Government official. The Governor and the Deputy Governors are appointed by the

Governor-General in his discretion, while four Directors are nominated by the Governor-General in Council and eight Directors are elected as representatives of the five Local Boards of the Bank. The Government official is nominated.

(*b*) There are also five Local Boards of the Bank at Bombay, Calcutta, Madras, Delhi and Rangoon, corresponding to the five areas into which India and Burma is divided for this purpose. The members on the Local Boards are elected by the shareholders of the Bank.

(*c*) The original share capital of the Bank is Rs. 5 crores divided into shares of Rs. 100 each. Separate registers are maintained at the five centres. The Bank has an office in London to transact foreign business. Members of legislatures are not allowed to be Directors of the Bank.

Under the Constitution Act, no Bill or Amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India can be introduced into or moved in either Chamber *without the previous sanction of the Governor-General in his discretion*. It will thus be seen that the Federal Legislature can exercise practically no control either over the constitution or policy of the Bank.

The Federal Railway Authority

The Constitution Act entrusts the duty of regulation, maintenance and operation of railways to the Federal Railway Authority. The Authority in discharging its functions shall be guided by instructions of *policy* given by the Federal Govern-

ment. In the event of dispute between the Federal Government and the Authority, the decision of the Governor–General in his discretion will be final. The executive authority of the Federation in respect of railways is vested in the authority, and the Ministry's control over it is in respect of laying down *general policy* only. Acting on the advice of the London Committee on Railway Administration (1933), the Constitution provides (1) that the Authority shall consist of seven members, of whom four shall be appointed by the Federal Government and three by the Governor–General in his discretion ; (2) that the members should possess special knowledge of commerce, industry and agriculture or should possess administrative experience ; (3) that the members shall normally be appointed for a term of five years and be eligible for reappointment ; (3) that the Authority shall exercise its authority through a *Chief Railway Commissioner* and a *Financial Commissioner* ; and (4) that in discharging its functions under the Act the Authority will be guided by business principles. The Governor–General is empowered to appoint a *Railway Rates Committee* to give *advice* to the Authority in connection with disputes between persons using the railways and the Authority as to rates and traffic facilities. Legislation regarding regulation of rates and fares shall not be introduced in either Chamber of the Federal Legislature except on the recommendation of the Governor-General, i. e., only the Government can introduce it. Provision is also made for the appointment of a *Railway Tribunal*, consisting of a President (a Judge of the Federal Court) and two members appointed from a panel by the Governor-General, in his discretion, to *decide* railway disputes.

An appeal from this Tribunal shall lie to the Federal Court on a question of law only.

Regarding the finance of the Authority, the Railway Budget will be prepared and scrutinised by the Authority itself and will *not* be submitted to the vote of the Federal Legislature; nor will the accounts be examined by the Public Accounts Committee as at present. Any surpluses of revenue will be apportioned between the Federation and the Authority in accordance with a Scheme prepared and reviewed by the Federal Government. Sir Otto Niemeyer in his Report expressed the hope that the railways would soon be able to make such a contribution to the general revenues, but the Wedgwood Committee point out that the railway business is being managed on a hand-to-mouth basis and that, in view of the competition of motor traffic, it is doubtful whether anything more than the bare interest charges can be paid out of railway revenues in the near future.

APPENDIX A

LEGISLATIVE LISTS

LIST 1

Federal Legislative List

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with, any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries, extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Banks.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions, payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purpose that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historical monuments; archæological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State of British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

Communications

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes, regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

Commercial

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms: ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale or export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36 Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking businesss by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

Administrative

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Governor of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside the unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and to such extent as is expressly authorised by Part II of this Act (relating to the Federation of India) the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

Financial

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs ;

(*c*) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (*b*) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from, or into, a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act (relating to the Judiciary), the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II

Provincial Legislative List

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if

there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act (relating to the Governors' Provinces), the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minior railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases;

veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I;

unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

Provincial Finance

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narotic drugs and narcotics; non-narcotic drugs;

(*c*) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland water-ways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III

Concurrent Legislative List

Part I

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.
20. Mechanically propelled vehicles.
21. Boilers.
22. Prevention of cruelty to animals
23. European vagrancy; criminal tribes.
24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.
25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

Part II

Vide Sec. 126 (2)

26. Factories.
27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.
28. Unemployment insurance.
29. Trade unions; industrial and labour disputes.
30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.
31. Electricity.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels. and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.
33. The sanctioning of cinematograph films for exhibition.
34. Persons subjected to preventive detention under Federal authority.
35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.
36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

APPENDIX B

TABLES OF SEATS

The Council of State

Representatives of British India

Table I

1 Province or Community	2 Total Seats	3 General Seats	4 Seats for Scheduled Castes	5 Sikh Seats	6 Mahomedan Seats	7 Women's Seats
Madras	20	14	1	—	4	1
Bombay	16	10	1	—	4	1
Bengal	20	8	1	—	10	1
United Provinces ...	20	11	1	—	7	1
Punjab	16	3	—	4	8	1
Bihar	16	10	1	—	4	1
Central Provinces and Berar	8	6	1	—	1	—
Assam	5	3	—	—	2	—
North-West Frontier Province ...	5	1	—	—	4	—
Orissa	5	4	—	—	1	—
Sind	5	2	—	—	3	—
British Baluchistan ...	1	—	—	—	1	—
Delhi	1	1	—	—	—	—
Ajmer-Merwara ...	1	1	—	—	—	—
Coorg	1	1	—	—	—	—
Anglo-Indians ...	1	—	—	—	—	—
Europeans	7	—	—	—	—	—
Indian Christians • ...	2	—	—	—	—	—
Total ...	150	75	6	4	49	6

Table II

The Federal Assembly

Representatives of British India

1	2	3	4	5	6	7	8	9	10	11	12	13
		General Seats										
Province	Total Seats	Total of general Seats	General seats reserved for Scheduled Castes	Sikh Seats	Mahomedan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for representatives of commerce and industry	Landholders' Seats	Seats for representatives of labour	Women's Seats
Madras . . .	37	19	4	-	8	1	1	2	2	1	1	2
Bombay . . .	30	13	2	-	6	1	1	1	3	1	2	2
Bengal . . .	37	10	3	-	17	1	1	1	3	1	2	1
United Provinces . .	37	19	3	-	12	1	1	1	-	1	1	1
Punjab . . .	30	6	1	6	14	-	1	1	-	1	-	1
Bihar . . .	30	16	2	-	9	-	1	1	-	1	1	1
Central Provinces and Berar .	15	9	2	-	3	-	-	-	-	1	1	1
Assam . . .	10	4	1	-	3	-	1	1	-	-	1	-
North-West Frontier Province .	5	1	-	-	4	-	-	-	-	-	-	-
Orissa . . .	5	4	1	-	1	-	-	-	-	-	-	-
Sind . . .	5	1	-	-	3	-	1	-	-	-	-	-
British Baluchistan . .	1	-	-	-	1	-	-	-	-	-	-	-
Delhi . . .	2	1	-	-	1	-	-	-	-	-	-	-
Ajmer-Merwara . .	1	1	-	-	-	-	-	-	-	-	-	-
Coorg . . .	1	1	-	-	-	-	-	-	-	-	-	-
Non-Provincial Seats . .	4	-	-	-	-	-	-	-	3	-	1	-
Totals . .	250	105	19	6	82	4	8	8	11	7	10	9

Table III

Provincial Legislative Assemblies

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		General Seats												Seats for Women				
Province	Total Seats	Total of General Seats	General Seats reserved for Scheduled Castes	Seats for representatives for backward areas and tribes	Sikh Seats	Mahomedan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for representatives of commerce, industry, mining and planting	Landholders' Seats	University Seats	Seats for representatives of labour	General	Sikh	Mahomedan	Anglo-Indian	Indian Christian
Madras . . .	215	146	30	1	-	28	2	3	8	6	6	1	6	6	-	1	-	1
Bombay. . .	175	114	15	1	-	29	2	3	3	7	2	1	7	5	-	1	-	-
Bengal . . .	250	78	30	-	-	117	3	11	2	19	5	2	8	2	-	2	1	-
United Province .	228	140	20	-	-	64	1	2	2	3	6	1	3	4	-	2	-	-
Punjab . . .	175	42	8	-	31	84	1	1	2	1	5	1	3	1	1	2	-	-
Bihar . . .	152	86	15	7	-	39	1	2	1	4	4	1	3	3	-	1	-	-
Central Provinces and Berar . . .	112	84	20	1	-	14	1	1	-	2		1	2	3	-	-	-	-
Assam . . .	108	47	7	9	-	34	-	1	1	11	-	-	4	1	-	-	-	-
North-West Frontier Province . .	50	9	-	-	3	36	-	-	-	-	2	-	-	-	-	-	-	-
Orissa . . .	60	44	6	5	-	4	-	-	1	1	2	-	1	2	-	-	-	-
Sind . . .	60	18	-	-	-	33	-	2	-	2	2	-	1	1	-	1	-	-

In Bombay seven of the general seats shall be reserved for Marathas.

In the Punjab one of the Landholders' seats shall be a seat to be filled by a Tumandar.

In Assam the seat reserved for women shall be a non-communal seat.

Table IV

Provincial Legislative Councils

1 Province	2 Total of Seats	3 General Seats	4 Mahomedan Seats	5 European Seats	6 Indian Christian Seats	7 Seats to be filled by Legislative Assembly	8 Seats to be filled by Governor
Madras	Not less than 54 Not more than 56	35	7	1	3	...	Not less than 8 Not more than 10
Bombay	Not less than 29 Not more than 30	20	5	1	...	...	Not less than 3 Not more than 4
Bengal	Not less than 63 Not more than 65	10	17	3	...	27	Not less than 6 Not more than 8
United Provinces	Not less than 58 Not more than 60	34	17	1	...	...	Not less than 6 Not more than 8
Bihar	Not less than 29 Not more than 30	9	4	1	...	12	Not less than 3 Not more than 4
Assam	Not less than 21 Not more than 22	10	6	2	...	...	Not less than 3 Not more than 4